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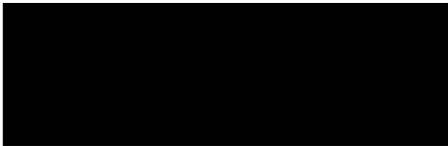
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS2090  
Washington, D.C. 20529-2090



U.S. Citizenship  
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Date: **MAY 05 2009**

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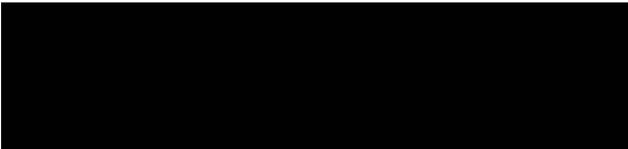
Applicant:



APPLICATION:

Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director decided that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. This decision was based on the director's determination that the applicant had exceeded the forty-five (45) day limit for a single absence from the United States during this period.

On appeal, counsel for the applicant asserts that a timely response to the Notice of Intent to Deny was submitted prior to the issuance of the director's decision, and provides evidence to support his assertion. Counsel asserts that the applicant erroneously and inadvertently mentioned an incorrect date of his reentry into the United States.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must establish his continuous unlawful residence in the United States from before January 1, 1982, through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986, through May 4, 1988. Sections 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act; 8 C.F.R. §§ 245a.11(b) and (c).

"Continuous residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

*Continuous residence.* An alien shall be regarded as having resided continuously in the United States if:

- (1) No single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed. [Emphasis added.]

The director's determination that the applicant had been absent from the United States for over 45 days was based on the applicant's testimony taken at the time of his interview on June 15, 2004. The applicant asserted that he departed the United States for Canada on October 20, 1987, and returned on December 12, 1987.

On October 13, 2005, the applicant was advised in writing of the director's intent to deny the application. In his notice of intent, the director indicated that, due to the applicant's absence from the United States from October 20, 1987, to December 12, 1987, he had failed to establish continuous residence in the United States. The applicant was given the opportunity to submit evidence that would overcome the basis for denial of his application. According to the director, in her Notice of Decision, the applicant did not respond to this notice.

On appeal, counsel provides a copy of his brief, which he asserts was submitted in response to the Notice of Intent to Deny. Counsel asserted that the applicant did not exceed the 45-day limit for a single absence as he departed the United States on October 20, 1987, and returned on October 29, 1987. Counsel asserted that the applicant's intention to visit Canada was for the purpose of meeting relatives for a short time, and it was not feasible for him to stay for more than a week. Counsel asserted, "that the alien erroneously and unintentionally testified wrong date of entry into the United States." Counsel asserted, in pertinent part:

However, at the time of testimony, the alien erroneously mentioned their [sic] return dates as December 12, 1987, instead of October 29, 1987. It should be noted that the alien has a short memory and could not recollect the exact date of return from Canada, as over 16 years has elapsed from the time of his visit to Canada to the time of his interview. He innocently testified a wrong date of entry into the United States.

Counsel provided a copy of an affidavit notarized on August 14, 1990, that was previously submitted from an acquaintance, [REDACTED] of Sunnyvale, California, who attested to the applicant's San Jose residences since October 1980. Counsel also provided:

- An affidavit from an acquaintance, [REDACTED] of Hicksville, New York, who indicated that he and the applicant went to Canada on October 20, 1987, to visit family and friends and returned to the United States on October 29, 1987. The affiant asserted that due to employment, he and the applicant had to return to the United States within ten days.
- An affidavit from the applicant indicating that he visited Canada on October 20, 1987, and returned to the United States on October 29, 1987. The applicant indicated that due to a short memory he could not recollect the exact date of return and "I mistakenly mentioned the date of my return as December 12, 1987, instead of October 29, 1987."

With respect to his absence from the United States in 1987, the record contains an affidavit notarized September 9, 1990, from [REDACTED] of British Columbia, Canada, who attested to the applicant's visit to his residence from October 20, 1987 to October 29, 1987, and an affidavit notarized August 14, 1990, from [REDACTED] of Sunnyvale, California, who indicated he accompanied the applicant to Canada on October 20, 1987, and returned to the United States on October 29, 1987. A review of the applicant's Form I-687 application and Form for Determination of Class Membership that were signed on July 26, 1990, also indicates he returned to the United States on October 29, 1987.

This information coupled with the statements of counsel and the applicant are plausible and reasonable under these circumstances. Consequently, the director's finding regarding this issue is withdrawn.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would

have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

During the adjudication of the applicant's appeal, information came to light that adversely compromised the credibility of his claim of residence in this country from prior to January 1, 1982 to May 4, 1988. On March 10, 2009, the AAO sent a notice to the applicant which advised him of the adverse information contained within the record. Specifically:

The record reflects that you were 12 years of age at the time you purportedly entered the United States in October 1980. You asserted at the time of your interview to have been employed during the requisite period, but provided no evidence to support your assertion. Further, this assertion raises questions as you did not claim any employment during the requisite period on your Form I-687 application. In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, you submitted a single affidavit attesting to your residence in San Jose, California. The evaluation of an applicant's claim is a factor on both the quality and quantity of the evidence provided. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the single affidavit submitted by you is lacking in probative value and evidentiary weight. The affidavit failed to provide details regarding the nature or origin of the affiant's relationship with you or the basis for the affiant's continuing awareness of your residence. The absence of sufficiently detailed documentation to corroborate your claim of continuous residence for the entire requisite period seriously detracts from the credibility of your claim. Therefore, you have not met your burden of proof.

Finally, the affidavit submitted attested to your residence in the United States since October 1980. However, you indicated on your Form G-325A, Biographic Information, to have resided in your native country, India, from October 1968 to October 1981.

The applicant was also advised that the derogatory information in the Form G-325A indicated that he had misrepresented the date that he first arrived in the United States and thus casts doubt on his eligibility for adjustment to permanent residence under the provisions for the LIFE Act.

Counsel, in response, requests that the AAO take into account the passage of time and the applicant's difficulties in obtaining corroborative documentation of unlawful residence. Counsel submits an affidavit from [REDACTED], who indicated that she met the applicant in 1981 at the Sikh Cultural Society Gurudwara in Richmond Hill, New York. The affiant indicated that the applicant was residing in San Jose, California and visiting New York at the time. The affiant asserted that she kept in touch with the applicant via the telephone while the applicant was residing in San Jose.

Counsel also submits an affidavit from the applicant who reaffirms his claim to have entered the United States in October 1980 and to have resided in San Jose, California during the requisite period. The applicant asserts that the individual with whom he illegally entered the United States in October 1980 has passed away. The applicant asserts that the information on the Form G-325 “was an inadvertent typographical error.” The applicant asserts, in pertinent part:

I was merely 12 years of age when I entered the United States of America and in constant fear of being nabbed by the U.S. immigration officials for my illegal stay in the United States. Therefore, I did home schooling and lived here to work hard and earn an honest living to escape poverty and deprivation in my home country. I survived by doing everyday odd jobs for people in return for some money and have never disrespected the laws of the United States. Since I was never legally employed or paid remuneration via check, I cannot provide any proof of my illegal prior employment.

The affidavits submitted along with the statements of counsel regarding the applicant’s inability to produce additional evidence of residence for the period in question due to the passage of time have been considered. However, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The affiants’ statements provided do not provide detailed evidence establishing how they knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant’s residence, activities and whereabouts during the requisite period. To be considered probative, an affiant’s affidavit must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits provided by the affiants do not provide sufficient detail to establish that the witness had an ongoing relationship with the applicant for the duration of the requisite period that would permit the applicant to know of the applicant’s whereabouts and activities throughout the requisite period.

The absence of sufficiently detailed documentation to corroborate the applicant’s claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant’s reliance upon documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period as required under both 8 C.F.R. § 245a.12(e) and *Matter of E- M--*, *supra*.

Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.