

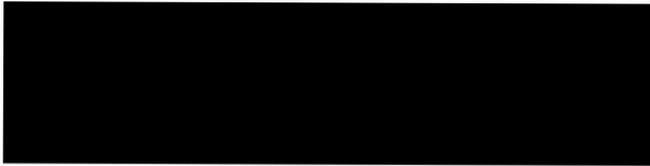
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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Services

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FILE:



Offices: NEW YORK CITY

Date: MAY 06 2009

MSC 02 044 62529

IN RE: 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 director in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel asserts that the director did not properly evaluate the evidence of record and did not give due weight to the affidavits. Counsel asserts that the evidence submitted is sufficient to establish that the applicant resided in the United States continuously in an unlawful status during the requisite period for LIFE legalization.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: “An alien shall be regarded as having resided continuously in the United States if *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.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(b).

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and its amenability to verification. See 8 C.F.R. § 245a.12(e).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the

factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant, a native of India who claims to have lived in the United States since January 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on November 13, 2001.

In a Notice of Intent to Deny (NOID), dated July 21, 2007, the director indicated that the applicant had not submitted sufficient credible evidence to establish that he entered the United States before January 1, 1982 and continuously in the country in an unlawful status from before January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

The applicant did not respond to the NOID and on August 30, 2007, the director issued a Notice of Decision denying the application based on the reasons stated in the NOID.

On appeal counsel asserts that the director did not properly evaluate the evidence of record and did not give due weight to the affidavits. Counsel asserts that the evidence submitted is sufficient to establish that the applicant resided in the United States continuously in an unlawful status during the requisite period for LIFE legalization.

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).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The documentation submitted by the applicant in support of his claim that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through May 4, 1988, consists of the following:

- A photocopied affidavit of employment by [REDACTED] president of Brasco Impex Corporation in New York City, dated June 20, 1987, stating that the applicant was employed from August 9, 1982 to May 1985, as a "packer" and "inventory controller."
- A photocopied affidavit of employment by [REDACTED] of A & Zia Construction Company in Brooklyn, New York, dated July 3, 1987, stating that the applicant was employed from June 1987 to July 1987, and was paid \$400 per week.

A photocopied statement dated August 20, 1987, from Republic National Bank of New York, addressed to the applicant at [REDACTED] New York, as well as a photocopied cancelled check from the applicant dated in 1987.

- Photocopied rental receipt for [REDACTED], dated February 5, 1981 and January 1, 1982.

Photocopied envelopes addressed to the applicant at [REDACTED] New York, with foreign postmarks that appear to have been altered by hand. The originals of the envelopes are not in the file.

- A statement from [REDACTED] dated June 14, 1991, stating that the applicant had been his patient since February 1981, that he had chemical diabetes and recurrent upper respiratory track infection, had visited his office on an average of 4-5 times a year for the illnesses listed above, and that the last visit was on January 9, 1990.

- A letter by [REDACTED], secretary for Muslim Community Center of Brooklyn, Inc. dated February 15, 1990, stating that the applicant had been participating in Friday congregations from 1981 to the present (1990).
- A series of affidavits – dated in 1987 and 1990 – from individuals who claim to have rented an apartment to, resided with, or otherwise known the applicant since the 1980s.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each document in this decision.

The affidavits of employment from Brasco Impex Corporation and A & Zia Construction Company, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i). The affidavits did not state the applicant's address during the periods of employment, did not indicate whether the information was taken from company records, and whether such records are available for review. Nor are the affidavits supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. Thus, the affidavits are not persuasive evidence that the applicant resided in the United States from before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

The statement from [REDACTED] indicating that the applicant had been his patient since February 1981, and visited his office an average of 5-4 times a year for treatment, is short on details and did not give any specific appointment dates. [REDACTED] did not indicate whether the information about the applicant was from official medical records maintained by his office or from personal memory. The statement is not supplemented by any medical records confirming the applicant's appointments with [REDACTED] from February 1982 through May 4, 1988. In addition, [REDACTED] did not identify any address for the applicant during the period he allegedly was his patient. In view of these substantive shortcomings, the statement from [REDACTED] has limited probative value. It is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The letter from [REDACTED] secretary for the Muslim Community Center of Brooklyn, Inc., does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The letter from [REDACTED] vaguely stated that the applicant had been attending Friday congregations since 1981, but did not indicate if and when the applicant became a member of the center, where the applicant lived at any point in time between 1981 and 1988, how and when he met the applicant, and whether his information about the applicant was based on [REDACTED]'s personal knowledge, the mosque's records, or hearsay. Thus, since the

letter does not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), it has little probative value. The letter is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The affidavits in the record – dating from 1987, and 1990 – from individuals who claim to have rented an apartment to, resided with, or otherwise known the applicant during the 1980s, have minimalist or similarly worded formats with limited personal input by the affiants. Considering the length of time they claim to have known the applicant – in most cases since 1981 – the affiants provided relatively little information about the applicant's life the United States and their interaction with him over the years. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationships with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the affidavits have limited probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

The statement from Republic National Bank of New York, dated August 20, 1987, as well as the canceled checks dated in 1987, is evidence that the applicant maintained an account with the bank in 1987, but is not sufficient evidence to establish that the applicant resided continuously in the United States in 1987 much less in the years prior, back to before January 1, 1982. Therefore, the bank statement and cancelled checks have little probative value as evidence that the applicant entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988.

The photocopied envelopes addressed to the applicant at [REDACTED] have illegible postmarks which appear to have been altered by hand. The original envelopes have not been submitted and it cannot be determined with any degree of certainty when the envelopes were mailed. Thus, the letter envelopes have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the requisite period for adjustment of status under the LIFE Act.

As for the photocopied rental receipt for [REDACTED] dated February 5, 1981 and January 1, 1982, it has handwritten notation of the applicant's name and no date stamp to verify the dates they were written. The receipts are not accompanied by a rental agreement or lease to establish that the applicant actually resided at the apartment during the period specified on the receipt. Thus, the photocopied receipts have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the period required for legalization under the LIFE Act.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required

under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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