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



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 141 67610

Office: FRESNO

Date: MAY 06 2009

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 Fresno, California. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application on the grounds 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 1982 through May 4, 1988.

On appeal the applicant asserts that the director failed to properly evaluate the documentation he submitted in support of his application. In the applicant's view, the documentation in the record is sufficient to establish that he entered the United States before January 1, 1982, and resided continuously in the United States 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 March 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on February 18, 2002.

In a Notice of Intent to Deny (NOID), dated March 11, 2008, the director indicated that the applicant had not submitted sufficient credible evidence to establish his entry into the United States before January 1, 1982, and his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The director noted inconsistencies in the record between the applicant’s claimed entry date of March 1981 and other documentation in the record, which undermines the veracity of the applicant’s claim. Specifically, the director noted that a marriage certificate in the file that indicates that the applicant was married in India on July 1, 1987, is inconsistent with prior statements by the applicant and affidavits in the record as well as information on the Form I-687 (application for status as a temporary resident) the applicant completed in 2000. The applicant was granted 30 days to submit additional evidence.

In response to the NOID, the applicant submitted a letter with explanations for some of the evidentiary discrepancies cited in the NOID. On July 18, 2008, the director issued a Notice of Decision denying the application on the ground that the response to the NOID was insufficient to overcome the grounds for denial.

On appeal the applicant asserts that the director failed to properly evaluate the evidence in the record and did not give due weight to the affidavits submitted in support of his application. In the applicant's view, the documentation in the record is sufficient to establish that he entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status during the requisite period for LIFE legalization. The applicant submitted no new documentation with the appeal.

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 documentation submitted by the applicant in support of his application that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status during the requisite period for LIFE legalization consists of the following:

- A letter of employment from [REDACTED] of Soto Farms in Lindsay, California, dated January 23, 2004, stating that the applicant was employed at his Farm from 1981 through 1988, during "the picking season of Olives between the month of September and October," and used to live at his house during the olive season.
- A letter of employment from [REDACTED] dated December 17, 2003, stating that the applicant was employed temporarily from 1984 through 1988, with [REDACTED]
- A letter from [REDACTED] president and chairman of Sikh Temple Los Angeles; Sikh Study Circle, Inc. in Los Angeles, California, dated February 2, 2004, stating that the applicant "is a follower of Sikh Religion," that he had been coming to the Temple and did voluntary services at the temple for many years.
- A series of affidavits – dated in 1990, 1999, 2004, and 2008 – from individuals who claim to have known the applicant during the 1980s.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility. The submitted evidence is not probative or credible.

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period for LIFE legalization. For someone claiming to have lived in the United States since 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary or secondary evidence during the following seven years through May 4, 1988.

The applicant has provided contradictory information and documents in support of his application. The letters and affidavits listed above attesting to the applicant's continuous residence in the country are contradicted by other documentation in the record. For example, a copy of a marriage certificate submitted by the applicant shows that the applicant was married in India on July 1, 1987. On the Form I-687, however, the applicant stated that he traveled from the United States to Canada from June to July 1987 to visit a friend. The applicant did not indicate any travels to India during the same period. Also, the marriage certificate in India indicates that the applicant was residing in India at the time of the marriage. This information is also contrary to affidavits in the record that attested to the applicant's travel to Canada from June to July 1987, as well as applicant's prior statements regarding the trip to Canada. The applicant was confronted with the discrepancies in the director's NOID. In response, the applicant claimed that he first went to Canada, then traveled to India to get married, returned to Canada and then to the United States. The applicant did not submit any objective evidence in support of his assertion or explain the affidavits by individuals attesting that they had knowledge that the applicant traveled to Canada and made no mention of his trip to India.

On the Form I-687, in response to question number 36, which requested applicants to list employment in the United States since first entry, the applicant stated "odd jobs & Self Employ." The applicant however, submitted two letters of employment from Soto Farms and Kahira Farms, both in California, stating that the applicant was employed from 1981 to 1988. The information on the Form I-687 is contradictory the two letters of employment in the record.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

As noted above, the applicant has provided contradictory testimony and information in support of his application. The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence – consisting of affidavits from individuals who claim to have known the applicant in the United States during the 1980s – is suspect and not credible. For example, the letter from [REDACTED] of Sikh Temple Los Angeles, 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 “is a follower of Sikh religion,” but did not specify if and when the applicant became a member of the temple, where the applicant lived at any point in time between 1981 and 1984, how and when he met the applicant, and whether his information about the applicant was based on [REDACTED] personal knowledge, the temple’s records, or hearsay. 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.

As for the affidavits in the record, they have minimalist or fill-in-the-blank formats. The affiants provided very little information about the applicant’s life in the United States and the nature and extent of their interactions with the applicant 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. Three of the affiants attest to the applicant’s trip to Canada in 1987, and nothing about the applicant’s residence in the United States during the 1980s. As previously discussed, those affidavits are contrary to a copy of the applicant’s marriage certificate which indicated that the applicant was residing in India and got married in India in 1987. In view of these substantive shortcomings, the AAO finds that the affidavits have little 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.

Based on the foregoing analysis of the evidence, and the contradictions discussed herein, 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. 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.