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



U.S. Citizenship
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FILE: [REDACTED] Office: SACRAMENTO Date: **OCT 26 2009**
MSC 02 225 62212
#72506 SAC-CS-APPEAL

IN RE: Applicant: [REDACTED]

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:

[REDACTED]

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.

Perry Rhew
Chief, Administrative Appeals Office

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

The director denied the application because the applicant did not establish that he continuously resided in the United States for the duration of the requisite period.

On appeal, counsel states the director made a decision based on erroneous assumptions. Counsel argues that the applicant should not be denied solely because he does not possess the documentary evidence establishing physical presence for the required period of time and given the totality of the circumstances, it is the applicant's position that he merits a favorable exercise of discretion.

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 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 pertinent evidence in the record is described below

1. Affidavit of Witness statements from [REDACTED] and [REDACTED] who state they know the applicant has resided in the United States since 1981.
2. Notarized statements from [REDACTED] of the Sikh Temple Selma who states that he knows the applicant came to the United States in 1981 and that he met him for the first time in 1986.
3. A notarized statement from [REDACTED] who states he knows the applicant has resided in the United States since 1987.
4. A letter from [REDACTED] of the Guru Nanak Sikh Society of U.S.A., Inc. in Fountain Valley, California who states he knows the applicant has resided in the United States since 1981.
5. An employment verification letter from [REDACTED] of New Villa Market in North Long Beach, California, who states the applicant worked for the firm from 1982 until 1987.

6. Over 20 retail receipts from 1983 along with the applicant's receipt from East-West Appliances in Artesia, California dated September 10, 1986.

The individuals submitting statements (Items # 1 through #4 above) claim to have known the applicant for a substantial length of time, in this case since 1981. However, their statements are not accompanied by any documentary evidence such as photographs, letters or other documents establishing the affiants' personal relationships with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the statements have little probative value. Additionally, the employment verification letter (Item # 5) does not provide the applicant's address at the time of employment and identify the location of company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable as is required of employment letters by 8 C.F.R. § 245a.2(d)(3)(i). Most of the retail receipts (Item # 6) are not specified to the applicant and one is specified to a person named [REDACTED]. The September 10, 1986 receipt, by itself, is not strong enough evidence to establish the applicant continuously resided in the United States during the entire requisite period.

On his Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act, that he signed on April 12, 1990, the applicant stated that he resided at [REDACTED] from November 1981 to April 12, 1990. However, on his Form I-687 that he submitted on December 14, 2005, and his Form G-325A, Biographic Information, he signed on October 28, 2003, the applicant stated that he resided at [REDACTED] from September 1981 to August 1987. Additionally, on his Form I-687 signed on April 12, 1990, he indicated that he had never married and had no children. However, on his Form G-325A he signed on April 19, 2002 and his Form I-485, Application to Register Permanent Resident or Adjust Status, filed on May 13, 2002, he indicated that he was married in India. The Form G-325A signed on April 19, 2002 shows his marriage date was August 23, 1987. On his Form I-485, he indicated that his daughter was born in India on June 3, 1988.

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. Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

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