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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  
and Immigration  
Services

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**PUBLIC COPY**

[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK

Date: OCT 30 2009

MSC 02 082 61362

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]

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, New York. 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. In so finding, the director indicated the applicant's statement that he left the United States in December 1987 to visit his wife who was ill and that he returned within 45 days. The director noted that the applicant had not submitted evidence to support his claim.

On appeal, counsel forwards a notarized statement from the applicant's spouse residing in India, who states that on December 15, 1987 she was seriously ill, that her husband came to India on December 12, 1987 to see her for about 45 days and that he then left India for the United States. Counsel also submits a letter from [REDACTED] who states that he provided treatment to the applicant's spouse from December 15, 1987 to January 20, 1988, that her husband came from the United States a week later to regularly visit his Clinic and that her spouse paid all her medical expenses. Counsel requests that the evidence that the applicant has submitted be reevaluated.

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. A notarized statement from [REDACTED] who states he knows the applicant has resided in the United States since 1981.
2. Notarized statements from [REDACTED] and [REDACTED] who state they know the applicant has resided in the United States since 1982.
3. A notarized statement from [REDACTED] who states she knows the applicant has resided in the United States since 1986.
4. An envelope addressed to the applicant in the United States postmarked February 6, 1981.

5. The applicant's notarized statement that he entered the United States in September 1981 and had been residing here since then during the statutory period apart from a brief absence in December 1987.
6. The applicant's Republic of Panama Identification Document for Seafarers No. [REDACTED] issued to him at [REDACTED] on December 17, 1986.
7. The applicant's passport number [REDACTED] issued to him on November 19, 1987 in Chandigarh, India.
8. A notarized statement from [REDACTED] the applicant's spouse residing in India, who states that on December 15, 1987 she was seriously ill, that he husband came to India on December 12, 1987 to see her for about 45 days and that he then left India for the United States.
9. A letter from [REDACTED] who states that he provided treatment to the applicant's spouse from December 15, 1987 to January 20, 1988, that her husband came from the United States a week later to regularly visit his Clinic and that he paid all of his wife's medical expenses.

[REDACTED] and [REDACTED] (Items # 1 through # 3 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. The envelope (Item # 4) bears no indications that it ever entered the United States postal system. The applicant states (Item # 5) that he remained continuously in the United States from September 1981 through December 1987. However, he was probably outside this country December 17, 1986, and on November 19, 1987, when his Republic of Panama Identification document (Item # 6) and his Indian Passport (Item # 7) were issued to him abroad. The notarized statement from the applicant's spouse and her doctor (Items # 8 and # 9) have been reviewed in juxtaposition to the other material in the record. These documents are not sufficiently probative to establish the applicant's continuous residence in the United States since before January 1, 1982 through the requisite time period.

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.