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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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FILE: [REDACTED] Office: NEW YORK CITY Date: **SEP 02 2009**  
MSC 02 002 63622

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.

**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. The decision is now before the Administrative Appeals Office (AAO) on appeal. 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 and give due weight to the evidence submitted by the applicant. Counsel asserts that the totality of the evidence shows that the applicant meets the continuous residence requirement 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.”

“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.” 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 from September 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on October 2, 2001.

In a Notice of Intent to Deny (NOID), dated September 19, 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 resided continuously in the country through the requisite period for LIFE legalization. The applicant was granted 30 days to submit additional information.

The applicant timely responded by offering some explanations for the evidentiary deficiencies cited in the NOID. Counsel submitted copies of documentation previously in the record. On January 31, 2008, however, the director issued a Notice of Decision denying the application on the ground that the information and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial.

On appeal, counsel asserts that the director did not properly evaluate and give due weight to the evidence submitted by the applicant. Counsel asserts that the totality of the evidence shows that the

applicant has satisfied the eligibility requirement for LIFE legalization. Counsel submitted no additional 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 record shows that the applicant's claim of entry before January 1, 1982 and his continuous residence in the country is contradicted by other evidence in the record. At his LIFE legalization interview on November 5, 2002, the applicant claimed that he entered the United States in September 1981, and thereafter resided continuously in the country. On the Form I-687 (application for status as a temporary resident) he filed in 1990, the applicant indicated that he entered the United States in September 1981, and that he traveled outside the United States to India to visit his family from July 5, to August 10, 1987. The applicant did not indicate any other trips outside the United States during the 1980s.

A review of records from United States Citizenship and Immigration services (USCIS) shows that the applicant was issued a B-1/B-2 visa at the United States Embassy in New Delhi, India on January 12, 1986, which the applicant used to enter the United States on September 27, 1989. The applicant did not submit and the record does not show any entry for the applicant in 1981 or 1987. Furthermore, the applicant did not indicate that he traveled to India in 1986 when the visa was issued. Thus, the copy of a Nonimmigrant Information System Basic Display in the record strongly suggests that the applicant must have been in India in 1986 when the visa was issued. Therefore the applicant's claim that he was continuously residing in the United States in 1986 is not credible.

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. *See 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.*

In the absence of any credible evidence of the applicant's prior entries into the United States, and the conflicting statements provided by the applicant of his entry into the United States, it appears that his documented entry on September 27, 1989, is the first time the applicant entered the United States.

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 legalization. For someone claiming to have lived in the United States since September 1981, it is noteworthy that the

applicant is unable to produce a solitary piece of primary evidence during the following seven years through May 4, 1988.

The record includes (1) a letter from [REDACTED] principal priest, which was approved by [REDACTED], secretary/treasure of Vedic Dharma Samaj Hindu Temple and Cultural Center in Fremont, California, dated September 3, 2001, stating that the applicant the applicant's family "are known to have visited our Temple since its start in mid eighties." (2) a letter from [REDACTED] life member of Sikh Study Circle Inc. in Stone Mountain, Georgia, dated October 6, 2007, stating that "from past records of the institution it was verified that [the applicant] was actively involved in the Gurdwara during the period October 1981 to November 1989," and that the applicant actively participated in the religious functions organized in the Temple.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v), 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. None of the letters cited above indicated whether the applicant was a member of the their organization and the specific dates of his membership, none indicated where the applicant resided at time during his association with the organizations or at any other time during the 1980, the letters were vague about how the authors knew the applicant, and were vague about their source of information about the applicant. Since the letters do not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that the letters have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

Lastly, the record includes affidavits – dated in 2001 and 2002 – from individuals who claim to have temporarily resided with the applicant or otherwise known the applicant during the 1980s. The affidavits have minimalist formats. Considering the length of time they claim to have known the applicant – in most cases since 1981 – the affiants provided few details about the applicant's life in the United States, such as where he resided, or worked, and the nature and **extent of their interactions with the applicant during the 1980s. The affidavits are not** accompanied by any documentary evidence of the affiants' own identities, nor any photographs, letters, or other documentary evidence demonstrating the affiants' personal relationships with the applicant in the United States during the 1980s. For the reasons discussed above, the affidavits have limited probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

For the reasons discussed above, 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.