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

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

DATE: JUN 0 1 2012 Offices: NEW YORK, NY FILE: [redacted]

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.

for Perry J. Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director (director), New York, New York. 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 by a preponderance of the evidence that he entered the United States before January 1, 1982, and has 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's decision to deny the application was erroneous. Counsel contends that the applicant has submitted sufficient credible evidence to establish that he meets the continuous residence requirement for legalization under the LIFE Act.

r 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).

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 applicant, a native of India who claims to have lived in the United States since June 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on December 13, 2001. On June 19, 2007, the director denied the application finding that the applicant has failed to establish by a preponderance of the evidence that he is eligible for the benefit sought. The applicant timely filed an appeal stating that he did not receive the Notice of Intent to Deny (NOID), issued by the director and that he could not provide rebuttal for the evidentiary deficiencies and inconsistencies noted by the director in his Notice of Decision (NOD).

Based on this assertion, on March 30, 2011, the AAO issued a NOID notifying the applicant of the deficiencies in the evidence he has submitted in support of his application. Specifically, the AAO notified the applicant of the inconsistency between his claimed absence from the United States during the requisite period and the information in his passport that casts serious doubt on his claim of continuous residence in the United States. The AAO also notified the applicant that the witness statements he submitted are substantively deficient. The AAO granted the applicant 21 days to submit rebuttal or additional evidence in support of his application.

The applicant timely responded to the NOID, addressing the inconsistences in the record and submitted updated copies of some witness statements previously submitted in the record. Counsel also submitted a brief in response to the NOID. The record reflects that the applicant's request for a copy of the Record of Proceedings (ROP), which was received on July 12, 2011, was processed on March 1, 2012. As of this date, no additional evidence has been submitted, therefore, the record will be deemed complete. The AAO has considered counsel's assertions, reviewed all of the evidence in the record, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.[1]

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 that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of witness statements. The AAO has reviewed the evidence in its entirety to determine the applicant's eligibility; however, the AAO will not quote each statement in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after

[1] The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

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 someone claiming to have lived in the United States since June 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 reflects that the applicant has provided conflicting and contradictory statements and documentation regarding his initial entry into the United States and his continuous residence in the country through the requisite period. On the *Form for Determination of Class Membership in CSS v. MEESE,* dated November 30, 1989, the applicant stated that he entered the United States in June 1981 without inspection and that he traveled to Canada from June to July 1987. The applicant did not indicate any other trips outside the United States during the 1980s. On the Form I-687 the applicant filed on June 13, 2005, he indicated that he traveled outside the United States only once during the 1980s – a trip to India to visit his family from June to July 1987. In his April 19, 2011, notarized statement submitted in response to the AAO's NOID, the applicant stated that he traveled outside the United States only once during the period 1981 to 1987 – a trip to Canada from June to July 1987.

A copy of the applicant's expired passport in the file however, indicates that the applicant had previously traveled on Indian passport number which was issued in Frankfurt, Germany, on "4-1-85." Since the applicant did not indicate any other absences from the United States other than his absence from June to July 1987, the information in the passport strongly suggests that the applicant was not residing in the United States in 1985 when the passport was issued. It also suggests that the applicant may have traveled outside the United States on more occasions than he had indicated, which would interrupt any unlawful presence he may have accumulated. As the applicant did not indicate any trip outside the United States in 1985, the information about a prior passport issued in Frankfurt, Germany, casts considerable doubt on the veracity of his claimed continuous residence in the United States from before January 1, 1982 to May 4, 1988. The applicant was asked to provide a reasonable explanation for this inconsistency.

In response, the applicant claims that he paid an agent to help him procure a passport, but that the agent disappeared with his money and passport application. He contends that the agent must have obtained a passport in his name in Frankfurt, Germany in 1985 and that he has not seen the agent or the passport in question since the agent's disappearance. The AAO does not find this explanation to be reasonable because the applicant has not submitted independent, objective evidence in support of his claims other than his self-serving uncorroborated statement. In addition, the AAO notes that information about passport was stamped in the applicant's passport which was issued to him in New York, New York, on June 7, 1990. The passport contains a notation indicating that the particulars of passport were verified prior to issuing the applicant a new passport.

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.* Accordingly, the AAO finds that the applicant has failed to provide a reasonable explanation for the inconsistencies in the record.

The affidavits in the record from individuals who claim to have rented an apartment to or otherwise have known the applicant during the 1980s have minimalist or fill-in-the-blank formats with very little input by the affiants. Some of the affidavits contain identical wordings claiming that the affiants had knowledge that the applicant resided in the United States from 1981, but the affiants did not provide any information as to the sources of their knowledge. Some of the affidavits provided inconsistent information about the applicant's residence in the United States and some of the affiants claim to have personal knowledge of the applicant's residence in the United States from 1981, although they state that they did not meet the applicant until several years later.

claims that he rented the applicant an apartment at San Jose, California, from March 1981 to October 1982. However, the applicant indicated on the Form I-687 he filed in 2005, and his April 19, 2011 notarized statement submitted in response to the AAO's NOID, that he first entered the United States in June 1981, and that his residential address was Rio Linda, California, from June 1981 to December 1986. It is implausible that the applicant would have rented an apartment from in the United States, three months before he actually entered the country. states that he first met the applicant in November 1985, yet he claims that he has personal knowledge that the applicant has been residing in the United States since June 1981. It is not possible that would have personal knowledge that the applicant resided in the United States four years before he actually met the applicant.

The affiants provided very few details about the applicant's life in the United States, and the nature and extent of their interactions with him over the years. The affidavits are not accompanied by documentary evidence demonstrating the affiants' personal relationships with the applicant in the United States during the 1980s. As previously stated, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho, id.* For the reasons discussed above, 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 the requisite period.

The AAO finds that the applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period. He has failed to resolve the inconsistencies in the record with independent objective evidence. The inconsistencies discussed above are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. No evidence of record

resolves these inconsistencies. As previously indicated, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho,* 19 I & N Dec. 582, 591-592 (BIA). These inconsistencies undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

Upon a *de novo* review of all of the evidence in the record, the AAO finds that the applicant has failed to overcome the evidentiary deficiencies and inconsistencies noted in the NOID. As such, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period 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.