



U.S. Citizenship
and Immigration
Services



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FILE: [Redacted]

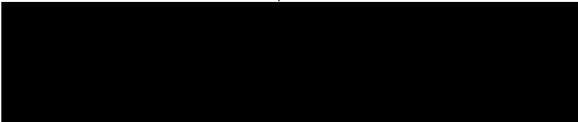
Office: Seattle

Date: DEC 27 2004

IN RE: Applicant: [Redacted]

PETITION: 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:



PUBLIC COPY

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INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wiemann, Director
Administrative Appeals Office

IDENTIFYING DATA DELETED TO
PREVENT THE DISCLOSURE OF
PERSONAL PRIVACY INFORMATION

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

The district director denied the application because the evidence provided by the applicant failed to establish that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel for the applicant asserts that, in denying the application, the district director has failed to consider all of the evidence provided by the applicant in support of his claim to continuous residence in the U.S.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. 8 C.F.R. § 245a.11(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 amenability to verification. 8 C.F.R. § 245a.12(e).

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. *See Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989).

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).

In an attempt to establish continuous unlawful residence since before January 1, 1982, as claimed, the applicant furnished the following evidence:

- Three supporting residence affidavits from [REDACTED]
 - An affidavit dated January 16, 2002, in which the affiant, [REDACTED] attests to the applicant's continuous residence in the U.S. since December 1981;
 - A subsequent affidavit dated October 14, 2002, in which he asserts that he has been acquainted with the applicant since January 1986;
 - A third, clarification affidavit dated September 30, 2003, submitted in response to the notice of intent to deny, in which the affiant attempts to reconcile the information included in his two prior affidavits;

- An affidavit from [REDACTED] attesting to the applicant having continuously resided in the U.S. since December 1981;
- An affidavit from [REDACTED] attesting to the applicant having continuously resided in the U.S. since June 1981;
- An affidavit from [REDACTED] attesting to the applicant having continuously resided in the U.S. since May 1981;
- Two separate affidavits from [REDACTED] each attesting to the applicant having continuously resided in the U.S. since November 1985;
- An affidavit from [REDACTED] attesting to the applicant having resided in the U.S. since 1981. The affiant bases his knowledge on the applicant having been a frequent customer at the affiant's ethnic food store;
- An affidavit from S. S. Brar, attesting to the applicant having continuously resided in the U.S. since May 1985;
- An affidavit from [REDACTED] attesting to the applicant having continuously resided in the U.S. since June 1985;
- A letter to the applicant dated December 21, 1987 from [REDACTED] Management Committee, which expresses appreciation for the applicant's donation for construction of a new temple;
- Two Air Mail envelopes which are addressed to the applicant in Whittier, California, from an acquaintance in India, and which carry stamped postmark dates of 1982 and 1985, respectively;
- A membership receipt dated December 31, 1986 for the amount of \$100, which is made out to the applicant from Sacramento Shartiya Sabha, Inc.; and
- A receipt dated August 17, 1985 for the amount of \$101., which is made out to the applicant from the Indo-American Cultural Organization, Inc., Yuba City, California.

In the district director's denial decision, a question was raised as to the credibility of the aforementioned letter of December 21, 1987 from [REDACTED] of the Guru Nanak Sikh Temple Management Committee, which expressed appreciation for the applicant's donation for construction of a new temple. During the course of a telephone verification call from a Citizenship and Immigration Services (CIS) officer to the Sikh Temple's Secretary of the Board, Satwindar Sadhal, it was ascertained that [REDACTED] did not become president of the temple until 1993 and that fund raising for the new temple did not begin until 1997, thereby casting doubt on the authenticity of this document.

In response to the notice of intent to deny, counsel asserts that, contrary to [REDACTED] response to the CIS officer's query, fund raising actually commenced following the temple's incorporation on March 25, 1983. In support of his response, counsel submits a photocopy of a California incorporation report filed on March 25,

1983. It is also noted that the temple's current address on this incorporation form coincides with that on the December 21, 1987 donation letter. Counsel's argument in rebuttal to the notice of intent, along with the supporting evidence presented, appears for the most part to credibly resolve the district director's questions regarding the authenticity of the donation letter in question.

In his denial, the district director also focuses on contradictory information provided in the aforementioned affidavits from [REDACTED]. In his initial affidavit of January 16, 2002, the affiant attested to the applicant's continuous residence in the U.S. since December 1981, whereas in his subsequent affidavit, he asserted that he has been acquainted with the applicant since January 1986. This, according to the district director, would appear to diminish the credibility of this affiant.

In his response to the notice of intent, counsel attempts to reconcile these allegedly contradictory statements from this affiant. Counsel also submits a third clarification affidavit dated September 30, 2003 from [REDACTED]. In this affidavit, the affiant asserts that, in his initial affidavit, he merely stated that he had knowledge of the applicant's residence in the U.S. since December 1981, whereas, in his subsequent affidavit, he indicated that after January 1986, he and the applicant were to become close personal friends and roommates. According to counsel, the affiant stated in his initial affidavit that he was aware of the applicant's residence in the U.S. since 1981, whereas in his subsequent affidavit, the affiant indicated that since January 1986, he had become closely acquainted. Counsel concludes that the information provided by [REDACTED] in his two affidavits is, therefore, not contradictory.

Counsel's and [REDACTED] attempts at reconciling the two affidavits in question are not entirely convincing. Moreover, an affidavit attesting to an applicant's residence during a given time period should be based on that affiant's *personal* knowledge. In this case, [REDACTED] statement in his subsequent clarification affidavit that he was not "personally" acquainted with the applicant until January 1986 leaves doubt as to the reliability of his previous affidavit attesting to the applicant's continuous residence in the U.S. since December 1981.

The notice of denial also raises an additional question regarding the applicant's departures from the U.S. According to the applicant's Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (INA), his only departure from the U.S. occurred in June 1987 when he left the U.S. for India to visit his family and returned in July 1987. The district director, in his decision, observed that according to the record, the applicant replaced his passport at the San Francisco consulate, having previously reported his earlier passport as having been lost. According to the decision, this prior passport had been issued to the applicant in Paris on January 5, 1989, although the applicant had never indicated having traveled to Paris and had never specified the purpose or duration of that departure.

In response to the district director's observation regarding the applicant's passport, counsel asserts that, through his contacts at the Indian consulate, he was able to procure a passport issued from Paris on January 5, 1989 without requiring him to depart the U.S. or to be physically present in Paris. Counsel's explanation regarding the applicant's claim to having acquired this passport without having to depart the U.S. appears less than credible and, in any case, cannot be substantiated based on the record of proceedings. Nevertheless, as applicants for permanent residence under the LIFE Act are only obliged to establish continuous residence in the United States through *May 4, 1988*, it is difficult to discern the relevance to the applicant's eligibility of the passport's having been issued on *January 5, 1989*.

As stated on *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the proof is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The applicant and his attorney appear for the most part to have satisfactorily addressed or resolved the perceived documentary inconsistencies referenced in the district director's decision. Even if the affidavits from [REDACTED] are deemed problematic for the reasons indicated above, the applicant has, nonetheless, provided at least *seven (7)* other affidavits all of which tend to corroborate his claim to residence in the United States during the requisite period. Such affidavits may be accorded substantial evidentiary weight and, along with the considerable contemporaneous evidence provided by the applicant in the form of postmarked envelopes and receipts in the applicant's name, are sufficient to meet his burden of proof of residence in the United States for the requisite period.

The evidence provided by the applicant establishes, by a preponderance of the evidence, that the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.