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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship
and Immigration
Services



FILE:

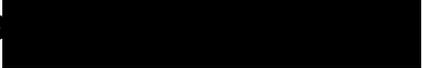


Office: Milwaukee

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IN RE:

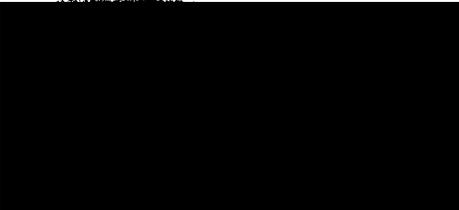
Applicant:



JUL 14 2004

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:



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

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prevent clearly unwarranted
invasion of personal privacy

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

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, the applicant's attorney correctly notes that the denial decision erroneously indicated that the applicant had failed to establish having entered the U.S. before January 1, 1981, instead of January 1, 1982 -- the actual entry date required for applicants for permanent resident status under section 1104 of the LIFE Act. However, the erroneous date cited in the decision is clearly in the nature of a typographical error, as evidenced by the fact that the actual required entry date of *January 1, 1982* is *correctly* cited elsewhere in the decision. As such, it does not appear that this inadvertent error in the decisional text constitutes an error of such severity that it prejudiced the outcome of the case.

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 Citizenship and Immigration Service (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence since prior to January 1, 1982, the applicant submits the following:

- A personal affidavit from the applicant dated March 25, 2003, in which he attests to having entered the U.S. without inspection from Canada on August 15, 1981. The applicant further asserts that he subsequently moved to Milwaukee, Wisconsin, where he obtained employment at Midget food market in December 1981;

- An affidavit from Surinder Bhati, former owner of Burleigh Grocery in Milwaukee, Wisconsin, who attests to having employed the applicant on a part-time basis from 1985 to 1988;
- A photocopy of a membership form for the Sikh Religious Society of Wisconsin, purportedly completed and signed by the applicant on September 10, 1981;
- An undated letter from [REDACTED] President of the [REDACTED] of Wisconsin, who attests to the applicant having arrived in Milwaukee, Wisconsin, in the fall of 1981, at which time the applicant became a permanent member of Milwaukee's Sikh religious society; and
- A photocopied letter from [REDACTED] of Midget Food Market, who attests to the applicant having worked for Walter Kmet on a three-hour-per-day basis during the years 1982, 1983 and 1984.

As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation. The extremely minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.2(12)(e).

In *Matter of E-- M--*, *supra*, the applicant had established eligibility by submitting (1) the original copy of his Arrival-Departure Record (Form I-94), dated August 27, 1981; (2) his passport; (3) affidavits from third party individuals; and (4) an affidavit explaining why additional original documentation is unavailable. Unlike the alien in *Matter of E-M-*, the present applicant does not offer any explanation as to *why* he has been unable to provide additional evidence to support his claim.

The applicant has submitted only *one* piece of contemporaneous documentation to establish presence in the U.S. from August 15, 1981 -- the time he claimed to have commenced residing in the U.S. -- through May 4, 1988. In light of the fact that the applicant claims to have continuously resided in the U.S. since 1981, this inability to produce contemporaneous documentation of residence raises serious questions regarding the credibility of the claim.

The affidavits submitted by the applicant do not adhere to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3). Many of the affidavits are not verifiable as they are not accompanied by the affiants' phone numbers or addresses and, therefore, do not provide a means by which the affiants may be contacted. Nor do these affidavits include the addresses where the applicant resided throughout the period in which the affiants have known the applicant. The affidavits from former employers also fail to specify the exact dates of employment or the applicant's duties or whether or not the information is taken from official company records which are accessible to CIS. The employment letter from [REDACTED] who refers to himself as owner of Midget Food Market, fails to provide an address for the market. In addition, the upper portion of [REDACTED] letter consists of a letterhead logo pertaining to an entirely different enterprise, KWK Electric, Inc. Neither the applicant nor counsel attempts to account for this discrepancy, which seriously diminishes the document's credibility.

An examination of the applicant's documentation discloses further unresolved inconsistencies. In his personal affidavit of March 25, 2003, the applicant claimed to have obtained part-time employment at Midget

[REDACTED] et in December 1981. The aforementioned employment letter from [REDACTED] indicates the applicant worked at [REDACTED] during 1982, 1983 and 1984. However, 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), signed by the applicant on March 18, 1990, he was employed at [REDACTED] from September 1981 to October 1986 -- not [REDACTED]. An affidavit from [REDACTED] former owner of [REDACTED] in Milwaukee, Wisconsin, indicates the affiant employed the applicant from 1985 to 1988, thereby contradicting the information provided in the applicant's I-687. Once again, neither counsel nor the applicant has attempted to explain, resolve or account for these inconsistencies in the evidence, which, in turn, further diminish the credibility of the applicant's claim and documentation.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Given the negligible amount contemporaneous supporting documentation provided by the applicant, along with the applicant's reliance on affidavits which contradict other evidence in the record and do not meet basic standards of probative value, it is concluded that he has failed to submit credible evidence establishing continuous residence in an unlawful status from prior to January 1, 1982 through May 4, 1988, as required.

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