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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

LA



FILE:



Office: Los Angeles

Date: JUN 22 2004

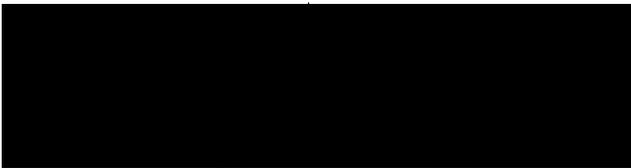
IN RE:

Applicant:



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

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Los Angeles, 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 she had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, counsel for the applicant asserts the director's decision was erroneous in its conclusion that the evidence provided by the applicant failed to meet his burden of proof of having established continuous residence in the United States since prior to January 1, 1982.

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 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 before January 1, 1982, as claimed, the applicant furnished the following evidence:

- A photocopy of a 1982 Form 1099 Miscellaneous Income tax statement issued to the applicant by the Top Hat Motel, Los Angeles, California;
- An employment letter from [REDACTED] manager of Top Hat Motel, attesting to the applicant having been employed in a maintenance capacity from August 1981 to March 1984;
- A form affidavit from [REDACTED] attesting to the applicant having resided at four different locations in California since June 1981. The affiant bases his knowledge on having been close friends with the applicant since both lived in Punjab, India;

- A letter from [indecipherable signature] of Omini Creations, Inc., Cerritos, California, attesting to the applicant having been employed as a salesman from August 1984 to October 1988;
- A photocopy of a 1986 Form 1099 Miscellaneous Income tax statement issued to the applicant by Omini Creations, Inc.
- A form affidavit from [redacted] attesting to the applicant having resided in Los Angeles, California since October 1981. The affiant bases his knowledge on having observed the applicant's regular attendance at Sunday religious services;
- An affidavit from [redacted] who attests to the applicant's continuous residence in the U.S. since August 1981;
- An affidavit from [redacted] who attests to the applicant's having resided in Los Angeles, California, from August 1981 to March 1984, and in Artesia, California, since April 1984;
- An affidavit from [redacted] who attests to the applicant's having resided at four different locations in California since June 1981. The affiant bases his knowledge on having been a friend of the applicant since both resided in India and on having been the applicant's landlord since November 1988; and
- An affidavit from [redacted] who attests to the applicant's having continuously resided in the U.S. since May 1981. The affiant bases his knowledge on having known the applicant before he departed India for the United States.

The applicant has submitted little contemporaneous documentation to establish presence in the U.S. from 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.

Many of the supporting affidavits fail to specify the basis of the affiant's knowledge or how the affiants became acquainted with the applicant. In addition, several of the affidavits, including that from Top Hat Motel, have subsequently been determined to be unverifiable and, therefore, do not provide a means by which the affiants may be contacted. As previously noted, 8 C.F.R. § 245a.12(e) specifies that the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Applications supported by documents which are not susceptible to independent verification may be denied.

Moreover, upon inspection, several of the affidavits provided are identical in their wording and, in addition, appear to have been typed on the *same* typewriter. As such, the documents appear to have been prepared for the affiants rather than by the affiants and do not have the appearance of originating from the personal knowledge of the affiants. Such affidavits cannot be considered independent, corroborative evidence

sufficient to establish his claim to continuous residence during the period in question, and cast doubt on the authenticity of the applicant's remaining affidavits.

In addition, rather than providing W-2 Wage and Tax Forms to establish employment during these years, the applicant has instead submitted photocopied Form 1099 Miscellaneous Income Tax statements from his purported employers. These statements raise additional questions as to the credibility of the applicant's claim. An examination of the photocopied 1986 MISC 1099 form issued by Omini Creations, Inc. discloses that the only monetary figure listed on the form is referred to as "Nonemployee compensation." This reference is not indicative of an actual employer-employee relationship and, as such, at variance with the applicant's claim to have been employed at that firm.

Given the numerous credibility issues arising from the documentation provided by the applicant, along with the applicant's reliance on affidavits which do not meet basic standards of probative value and are of questionable veracity, it is concluded that he has failed to establish 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.