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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

[Handwritten signature]

NOV 28 2004

FILE:

[REDACTED]

Office: Milwaukee

Date:

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:

[REDACTED]

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.

[Handwritten signature]

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 Interim District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) 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 from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that he is submitting an additional affidavit from the applicant, and that he is in the process of obtaining additional evidence in support of the applicant's claim to residence.

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. 8 C.F.R. § 245a.12(e). When something is to be established by a preponderance of evidence it is sufficient that the proof only establish that it is *probably* true. *See Matter of E-- M--*, 20 I&N Dec. 77 (Comm. 1989). Preponderance of the evidence has also been defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979).

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).

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

- A personal affidavit from the applicant, in response to the notice of intent to deny, in which the applicant attests to having entered the U.S. without inspection in June 1981. The applicant also provides a chronological listing of his successive residences as follows: in Manitoba, New Jersey, from July 1981 to December 1982; in Gary, Indiana from January 1983 to June 1987; and in Modesto, California, from July 1987 to December 1990. The applicant also makes reference to his places of employment subsequent to having entered the U.S.;
- An affidavit from [REDACTED] who asserts that the applicant resided with him at his place of residence in Modesto, California, from July 1987 to 1990, at which point the applicant relocated to Chicago, Illinois;
- A letter from [REDACTED] President of the Sikh religious Society of Wisconsin, who attests to the applicant having been a member of his religious organization who regularly attended weekly services from June 1983 to June 1987;

- An affidavit dated February 4, 1991 from [REDACTED], who attests to the applicant having resided in Minotola [sic], New Jersey, since July 1981. The affiant, who bases his knowledge on having been a neighbor and acquaintance of the applicant, also attests to having provided the applicant with transportation to the Canadian border at Buffalo, New York, in August 1987, and picked up the applicant later that month upon the applicant's return to the U.S.;
- An affidavit from [REDACTED] attesting to having lived with the applicant at the same place of residence in Minotola [sic], New Jersey, in 1981; and
- An affidavit from [REDACTED] who attested to the applicant having stayed with him at his residence while visiting Canada from August 1, 1987 to August 30, 1987.

The regulations at 8 C.F.R. § 245a.2(d) provide a list of documents that may establish continuous residence and specify that "any other relevant document" may be submitted. However, while the affidavits and third-party statements provided by the applicant could possibly be considered as evidence of continuous residence during the period under discussion, certain questions have arisen with regard to discrepancies in the applicant's documentation which impact on the overall credibility of his claim. The affidavit from Balraj Singh indicates the applicant resided with the affiant at the affiant's place of residence in Modesto, California from July 1987 to 1990, at which point the applicant purportedly relocated to *Chicago, Illinois*. However, in the applicant's affidavit on appeal, he specifies that after residing in Modesto, California from June 1987 to December 1990, he moved to *Ft. Lauderdale, Florida*.

The affidavit from [REDACTED] indicates the applicant has resided in Minotola [sic], New Jersey, since July 1981. There is no reference to the applicant having moved elsewhere as of February 4, 1991 -- the date of the affidavit. However, other evidence provided by the applicant, including his own previously-completed I-687 application and affidavits he submitted in response to the district office's notice of intent to deny and notice of denial, indicate that, from January 1983 to June 1987, the applicant resided in Manitoba, New Jersey, and from July 1987 to December 1990, resided in Modesto, California. There is no attempt on appeal by counsel or the applicant to resolve these serious discrepancies in the documentation which, in turn, seriously diminish the credibility of the applicant's claim and supporting evidence.

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. In this case, neither counsel nor the applicant have attempted to explain, address or resolve these discrepancies in the record, which, in turn, seriously diminish the credibility of the applicant's claim and supporting documentation. Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant 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).

It should also be noted that the applicant in this case has submitted *no* 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 June 1981, this inability to produce any contemporaneous documentation of residence raises serious questions regarding the credibility of his claim.

Given the applicant's failure to credibly resolve the inconsistencies and discrepancies raised in the documentation provided in support of his claim to residence, along with the absence of any contemporaneous documentation pertaining to this applicant, 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.