



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: [Redacted] Office: Seattle

Date: **OCT 25 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:

[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.

Robert P. Wiemann, Director  
Administrative Appeals Office

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prevent disclosure of information  
invasion of personal privacy

**PUBLIC**

**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 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, counsel for the applicant asserts that the district office's decision denying his client's application resulted from its failure to consider pertinent supporting documentation submitted by the applicant and from its having reached incorrect conclusions which were not based on the evidence in the record.

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).

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1), as follows: An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.

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 personal declaration from the applicant dated March 7, 2002;
- An affidavit from Harnek Singh, who attests to having met the applicant at a religious function in California in mid-June 1982;

- An affidavit from [REDACTED] attesting to having accompanied the applicant to the Fresno office of the Immigration and Naturalization Service or INS (now, Citizenship and Immigration Services or CIS) in 1987;
- An affidavit from Balraj Singh Mahal, who attests to the applicant having known the applicant since May 1981, when they first met at a local Sikh Temple;
- An affidavit from [REDACTED] who attests to the applicant's wife having visited the applicant in the U.S. in November 1987 and, again, in November 1988. According to the affiant, on each occasion, the applicant's wife later returned to her native India;
- An affidavit from [REDACTED] who attests to having been acquainted with the applicant and his wife since 1987;
- An affidavit from [REDACTED] attesting to the applicant having resided in the U.S. since 1981;
- An affidavit from [REDACTED] attesting to the applicant having resided in Fresno, California, from June 1981 to June 1986; and
- Two Air Mail envelopes addressed to the applicant in Fresno, California, and Cantua Creek, California, respectively. One of the envelopes appears to bear a stamped postmark dating from 1987; the postmark date on the other envelope is not decipherable.

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, third-party statements and postmarked envelopes provided by the applicant could possibly be considered as evidence of continuous residence during the period under discussion, certain questions have arisen which impact on the overall credibility of her claim. In the notice of intent to deny, certain discrepancies were noted in the applicant's documentation. In his personal declaration of March 7, 2002, the applicant stated that, once he arrived in the U.S. in 1981, he remained *continuously* in the U.S. until June 1987, when he traveled to Canada for a period of 20 days in which to visit a friend and celebrate his friend's marriage. The next time he departed the U.S. was in 1993 for the purpose of making a brief, one-month family visit.

According to the information he provided on his own Biographic Information Form G-325A, the applicant was married to [REDACTED] in India in 1985. Yet, while the applicant confirmed having made a trip to Canada in June 1987 on his Form I-687 application, no mention is made on that application or anywhere else in the record of his having departed the U.S. for India in 1985 in order to marry his wife. This information is at variance with the applicant's claim on his personal affidavit that he was in continuous residence in the U.S. from 1981 until June 1987. There is no attempt on appeal by counsel or the applicant to resolve the issue of the applicant's whereabouts in 1985.

Moreover, a review of the record discloses a further unresolved inconsistency. Included in the applicant's submissions is a translation of a birth certificate from the Chief Registrar, Punjab, India, indicating the applicant's son was born on *October 11, 1986*. The aforementioned affidavit from Jagdeep Singh, submitted by the applicant in support of his application, indicates that the applicant's wife visited him in the U.S. in November 1987 and, again, in November 1988. According to the affiant, on each occasion, the applicant's wife subsequently returned to her native India. There is no indication in the record of the applicant's wife having made any *previous* visits to

the U.S. As the applicant has specified in his personal affidavit that he resided continuously in the U.S. from 1981 through June 1987, he has not provided an explanation for his son's 1986 birth date.

Neither counsel nor the applicant, on appeal, have attempted to explain, address or resolve these serious discrepancies in the documentation and claim.

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).

Given the applicant's failure to credibly resolve the matter of his failure to reference his 1985 departure from the U.S. to India, it is concluded that he has failed to establish continuous residence in the U.S. 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.