

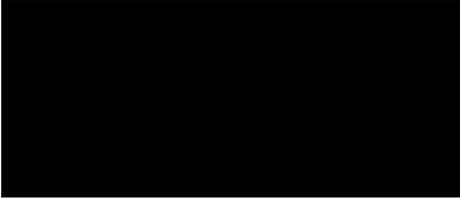
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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [Redacted]

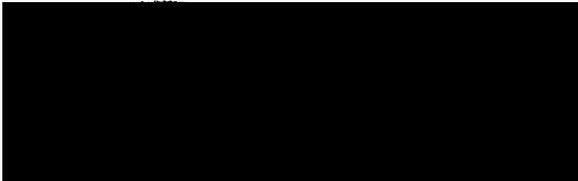
Office: Seattle

Date: APR 21 2005

IN RE: Applicant: [Redacted]

APPLICATION: 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. The file has 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, Seattle, Washington, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director found certain discrepancies in the applicant's documentation. First, the director found that the applicant had provided an apparent fraudulent document consisting of an airmail envelope with an Indian cancellation stamp dated December 13, 1982 addressed to him in the United States. The director determined that the document was suspect because two of the postage stamps on the envelope were not issued by the Indian government until 2000. Additionally, the director noted that the applicant had submitted a copy of a rental agreement dated (and commencing on) February 10, 1987 made out to him and another tenant showing the Hughson, California address. The director indicated that on the applicant's Form I-687 Application for Status as a Temporary Resident the applicant had indicated that he moved into that address a year earlier. Also, the director noted that although the applicant was requested to provide a certified copy of the final court disposition for his domestic violence assault arrest on August 9, 1994, the applicant had only forwarded a "compressed version" of the court disposition. The director found that the compressed version did not contain sufficient information to allow Citizenship and Immigration Services or CIS (formerly, the Immigration and Naturalization Service or INS or the Service) to make an informed decision concerning the application. The 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. See 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. See 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. *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:

- An affidavit from [REDACTED] who attests to having met the applicant in California in August 1981;
- A second affidavit from [REDACTED] who attests to having personal knowledge that the applicant had resided in the United States from December 1981 through December 1989;
- A third affidavit from [REDACTED] who attests to having ridden with the applicant to go to Canada on Christmas holiday in 1987;
- A letter written to the applicant in California from India in 1987;
- A letter dated April 4, 2003 from [REDACTED] president of the Sikh Temple & Sikh Study Circle Inc. in Los Angeles stating that the applicant was an active participant in Sikh Community Services sponsored by the Temple from 1982 thru 1985;
- A letter dated January 20, 2002 from [REDACTED] of the Hilmar Chiropractic Health Center indicating that the applicant had been treated at that office in California since January 1985;
- A personal money order dated June 17, 1982;
- An affidavit from [REDACTED] who asserts that he worked with the applicant as a truck helper from December 1989 until April 1990;
- An affidavit from [REDACTED] who attests that the applicant worked for his trucking company in California from January 1986 to December 1989;
- An affidavit from [REDACTED] who attests that the applicant lived at a residence in Seattle from January 1991 until February 1991;
- A guest registration receipt issued to the applicant dated December 14, 1987 from the Monroe Motel in Monroe, Washington;
- A Greyhound bus coupon dated March 12, 1984;
- An envelope purportedly sent to the applicant in California from India on December 13, 1981;

- A receipt to the applicant dated January 14, 1985 from Hilmar Chiropractic in California;
- A monthly rental agreement purportedly commencing on February 10, 1987 for a month-to-month rental for premises at [REDACTED] Hughson, California.

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, receipts, 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 his claim. In the director's decision, certain discrepancies were noted in the applicant's documentation. As noted above, the director found that the applicant had provided an airmail envelope with an Indian cancellation stamp dated December 13, 1982 addressed to him in the United States. The director determined that two of the postage stamps on that envelope were not issued by the Indian government until 2000. On appeal, the applicant has not addressed the director's finding of concerning this evidence. Therefore, the application may not be approved for this reason.

Additionally listed above, the director noted that the applicant had submitted a copy of a rental agreement dated (and commencing on) February 10, 1987 and made out to him and another tenant showing the Hughson, California address. The director indicated that on the applicant's Form I-687 Application for Status as a Temporary Resident the applicant had indicated that he moved into that address a year earlier. Again on appeal, the applicant has not addressed this issue. Beyond the director's determination, the lease document is also suspect because the applicant purportedly signed it on February 10, 1987. However, the form that the lease was written on bears a "Rev. 4/99" revision date indicating that the form was not even existent on February 10, 1987.

Also listed above, the director noted that although the applicant was requested to provide a certified copy of the final court disposition for his domestic violence assault arrest on August 9, 1994, the applicant had only forwarded a "compressed version" of the court disposition. The director found that the compressed version did not contain sufficient information to allow CIS to make an informed decision concerning the application. On appeal counsel states that the director's conclusion was wrong because the Seattle Police Department had sent a certified copy of the police report directly to CIS and there was some evidence that the court disposed of the matter. Counsel argues that the director had enough information to make an informed decision on the court's disposition using a preponderance of the evidence standard.

The record contains the police report dated August 9, 1994 referred to by counsel. The police indicated that the applicant had claimed that his wife was upset with him and thought he was seeing other women so she had hit her own face and chin against the door and that he hadn't hit her. However, although she hardly spoke English, the woman (who claimed to have been his wife for five years) indicated (through the operator on the language line that was used to translate for the officers) that the applicant had pushed her a few times and had then grabbed her hair and slammed her face onto a counter causing her injuries which were a cut to her chin and a swollen upper lip. She also stated through the translator that the applicant had hit her in the past.

The compressed domestic violence report that the applicant furnished from the Municipal Court of Seattle shows that the charge of assault had been dismissed with prejudice, bail had not been forfeitable and that the applicant had paid \$150 court costs. The document also indicated that the violation date was August 9, 1994 and that the filing date was August 10, 1984. The document shows that the applicant started probation on December 5, 1994 and that his probation was completed on September 1, 1995. On the one hand, the compressed report shows that the charge of assault had been dismissed with prejudice. However, that same report shows that the applicant had to serve a long probation period. According to the State of Washington, "No person charged with any offense against the law shall be punished for such offense, unless he shall have been duly and legally convicted thereof in a court having competent jurisdiction of the case and of the person." Revised Code of Washington (RCW) 10.01.050. Washington State defines "Crime-related probation" as: "means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be constructed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department." Definitions at RCW 9.94A.30(12). As the applicant completed his crime-related probation successfully, he had to have been convicted of the crime of assault. Washington State considers four degrees of assault as crimes. RCW 9A.36.011 (First Degree), RCW 9A.36.021 (Second Degree), RCW 9A.36.031 (Third Degree) and RCW 9A.36.041 (Fourth Degree). Had the applicant been convicted of first, second or third degree assault he would be ineligible for LIFE adjustment because he would have been convicted of a felony. An applicant for permanent resident status under section 1104 of the LIFE Act must establish that he or she has not been convicted of a *felony* or of three or more misdemeanors committed in the United States. See section 1104(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. § 245a.11(d)(1).

Therefore, notwithstanding counsel's argument that the director had enough information to make an informed decision on the court's disposition using a preponderance of the evidence standard, it was reasonable for the director to require the applicant furnish an official copy of the court disposition in his assault case. Otherwise, an informed decision concerning the application could be made. As the applicant failed to provide the documentation needed to resolve the issue, the application may not be approved for this additional reason.

Beyond the decision of the director, a review of the record discloses a further unresolved inconsistency. Included in the applicant's submission is his form I-687 Application for Status as a Temporary Resident dated February 5, 1991 in which he stated that he was "now married." In the police report dated August 9, 1994 cited above, the woman claimed to have been the applicant's wife for five years and the arresting officers listed the applicant as her husband. However, on his LIFE application dated January 20, 2002, the applicant claimed that he was single and that he had not been divorced. Also, on his Form G-325 A biographic information form dated January 20, 2002, the applicant stated that he had never married.

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 discrepancies found by the director in his order, it is concluded that he has failed to establish continuous residence in the United States 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.