

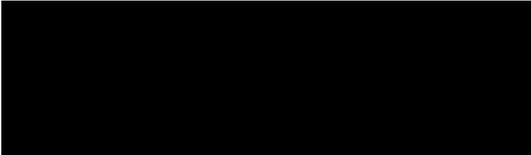
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U.S. Citizenship  
and Immigration  
Services



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FILE:

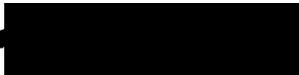


Office: Sacramento

Date: APR 07 2005

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:

Self-represented

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, Sacramento, California, 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 since before January 1, 1982 through May 4, 1988.

On appeal, the applicant requested a copy of the record of proceedings relating to his application. On February 23, 2005, the AAO complied with the applicant's request and provided the applicant with 30 days in which to submit additional evidence or a statement in support of his appeal. Subsequently, on March 15, 2005, the applicant submitted a brief in support of his appeal, in which he responded to issues raised in the district director's denial and requested that his application for adjustment be reconsidered and granted.

The applicant appears to be represented; however, the individual identified as representing the applicant is not authorized to do so under 8 C.F.R. § 292.1 or § 292.2. Therefore, the notice of decision will be furnished only to the applicant.

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 prior to January 1, 1982, the applicant submits the following:

- A letter of Pargan [REDACTED] President of the Sikh Temple Livingston, who indicates the applicant attended the temple from 1983 to 1988;
  - A previous letter from [REDACTED] which he stated that the applicant was a member of that congregation from 1981 to 1990;
- An affidavit from [REDACTED] who attests to the applicant having resided in the U.S. since June 1981. The affiant bases his knowledge on having been acquainted with the applicant since that date;
  - A previous affidavit from [REDACTED] in which he attested to the applicant having resided in the U.S. since December 1981. The affiant indicated that the applicant, who was a distant uncle of the affiant, stayed with the affiant and the affiant's family from December 1981 to April 1990;
- An affidavit from [REDACTED] attesting to the applicant having resided in the U.S. since June 1981, when the affiant and applicant first became acquainted with one another;
- An affidavit from [REDACTED] who attests to the applicant having resided in the U.S. since April 1982, when the affiant and applicant first met;
- A form affidavit from [REDACTED] who indicates that, based on his personal knowledge, the applicant has resided in the U.S. since June 1981;
- A form affidavit from [REDACTED] who indicates that, based on his personal knowledge, the applicant has resided in the U.S. since June 1981;
  - A previous affidavit from [REDACTED] who attests to the applicant having arrived in the U.S. in June 1981. The affiant also attests to the applicant having worked alongside him performing occasional agricultural field work during the period from 1981 to 1990;
- An affidavit from [REDACTED] who attests to the applicant having resided in the U.S. since December 1981. The affiant indicated the applicant lived with his family from December 1981 to April 1990;
- Five original store receipts. The receipts, which carry dates from 1987, do not indicate the name of the customer/recipient involved in the transaction; and
- Three Air Mail envelopes addressed to the applicant, which carry stamped postmark dates which appear to have been subsequently traced over.

In the notice of decision, the district director made reference to what appeared to be contradictions and inconsistencies in several of the residence affidavits submitted by the applicant. The director cited the two aforementioned affidavits from [REDACTED] wherein one affidavit refers to the applicant as a "friend," whereas the other describes the applicant as the affiant's "distant uncle." The director also

mentioned the two affidavits from [REDACTED] of the Sikh Temple, wherein one affidavit noted the applicant had been a regular member from 1983 to 1988, while the other referenced the applicant's membership as having lasted from 1981 to 1990.

In his subsequent brief on appeal, the applicant attempts to explain these inconsistencies. As to the statements from [REDACTED] the applicant describes the affiant as being both a friend as well as a distant relative. While making reference to the statements from [REDACTED] the applicant does not address the inconsistencies referenced by the district director in the decisional notice. While the applicant's attempt to address the inconsistencies cited by the district director are not entirely satisfactory, the inconsistencies themselves appear to be relatively inconsequential and, in any case, not of such magnitude as to negate the applicant's claim to continuous residence. It should also be noted that, contrary to the district director's observation in the notice of intent to deny, there is no requirement in the law or in the applicable regulations requiring that residence affidavits specify the manner or method by which the applicant entered the U.S.

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 an attempt to provide contemporaneous documentation of residence, the applicant has submitted original store receipts dating from 1987. However, as noted above, none of the receipts indicates the name of the customer/recipient involved in the transaction. The applicant also provides Air Mail envelopes addressed to him from India. While these carry stamped postmark dates, the dates themselves appear to have been subsequently traced over with a writing implement, as indicated by the district director in the notice of decision. On appeal, the applicant attempts to explain the situation, acknowledging that the dates may have been "enhanced," but denying that they were ever altered. Nevertheless, it is no longer possible with any degree of accuracy to discern the original postmark dates on the envelopes. In light of the fact that the applicant claims to have continuously resided in the U.S. since 1981, this inability to produce additional -- as well as more definitive -- contemporaneous documentation of residence raises serious questions regarding the credibility of the claim.

While the applicant has submitted affidavits and third-party statements attesting to residence, most are lacking basic and necessary information or details and, as such, fall far short of containing what such documents should include in order to render them probative for the purpose of establishing an applicant's continuous residence during the period in question. Many provide little or no detail regarding the basis for the affiant's acquaintanceship with the applicant; nor are many of the affidavits accompanied by the affiants' telephone numbers, therefore failing to provide a convenient means by which the affiants may be readily contacted for verification purposes.

It should also be noted that an application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center [or other office] does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis). While not mentioned in the district director's decision, further examination of the record discloses that at item 35 on the applicant's undated application Form I-687, which requests an applicant to specify any and all absences from the U.S. since initial date of entry, the applicant indicated that from May 20, 1987 to July 20, 1987, he departed the U.S. for Canada due to an unspecified emergency.

In the absence of other information, it is determined that the applicant's admitted two-month absence from the U.S. during 1987 far exceeded the 45-day period allowable for single absences from the U.S. Nevertheless, there must also be a further determination as to whether the applicant's prolonged absence from the U.S. was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988) holds that *emergent* means "coming unexpectedly into being." All that can be discerned based on the information provided by the applicant is that he was compelled by dint of an unspecified emergency situation to depart the U.S. for Canada, where he remained for two months. While there may well have been a valid basis for this departure, it also indicates that it was intended for the applicant to remain outside of the United States for an indefinite period, *i.e.*, until the emergency could be addressed or resolved. As such, it cannot be concluded that, once the applicant arrived in Canada, an *emergent* reason "which came suddenly into being" delayed or prevented his return to the United States beyond the 45-day period.

Given the applicant's having far exceeded the 45-day allowable limit for single absences from the U.S. during the period in question, his inability to submit any substantive or definitive contemporaneous evidence in support of his residence claim, and his reliance on affidavits and third-party statements which do not meet basic standards of probative value, it is concluded that he has failed to establish continuous residence in the U.S. in an unlawful status from prior to January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act.

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