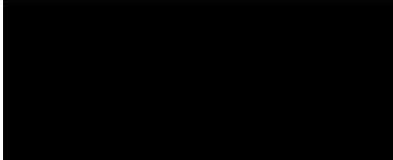


identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



L2

FILE:



Office: Sacramento

Date: **DEC 23 2005**

IN RE:

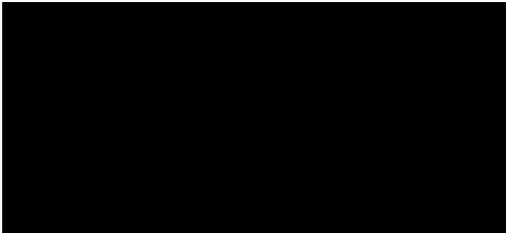
Applicant:



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. 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, San Francisco, 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 failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant had submitted sufficient evidence to support his claim of continuous residence in this country from January 1, 1982 through May 4, 1988. Counsel contends that the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) has failed to consider the difficulties that the applicant has encountered in obtaining evidence of his residence in this country in light of the fact that he was an illegal alien during the requisite period.

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 § 1104(c)(2)(B) of the LIFE Act and 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).

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).

The applicant is a class member in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (INA) on March 14, 1990. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry, the applicant did not list any residences in the United States before 1988. Further, at part #35 of the Form I-687 application where applicants were asked to list all absences from the United States since entry, the applicant indicated that he traveled to Mexico for a vacation from March 1987 to July 1987.

The record shows that the applicant subsequently submitted another separate Form I-687 application that is dated April 19, 1993. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry, the applicant did not list any residences in the United States before December 1988. In addition, at part #35 of the Form I-687 application where applicants were asked to list all absences from the United States since entry, the applicant again indicated that he traveled to Mexico for a vacation from March 1987 to July 1987. With this Form I-687 application, the applicant provided a "Form for Determination of Class Member in *CSS v. Meese*," dated April 19, 1993. At question #8 of the determination form, the applicant indicated that he had been absent from the United States from March 1987 to July 1987.

A review of the record reveals that the applicant failed to submit any evidence to support his claim of continuous residence in the United States since prior to January 1, 1982 through May 4, 1988 with either the Form I-687 application that was submitted on March 14, 1990 or the subsequently submitted separate Form I-687 application dated April 19, 1993. In addition, the applicant failed to put forth any explanation as to why he did not list any of his addresses of residence in the United States before 1988 on either of the Form I-687 applications despite his claim to have continuously resided in this country from prior to January 1, 1982 to May 4, 1988.

Subsequently, on August 31, 2001, the applicant submitted his Form I-485 LIFE Act application. With the Form I-485 LIFE Act application, the applicant included a Form G-325A, Report of Biographic Information, in which the applicant indicated that he resided at the Sikh Temple in Stockton, California from September [REDACTED] in Santa Clara, California from 1983 to 1984, 176 Damsan Dr., in San Jose, California from 1984 to 1985, an unspecified address in Brooklyn, New York from 1985 to 1986, and [REDACTED] in San Jose, California from 1987 up through and beyond May 4, 1988. Although the applicant provided a listing of his addresses in this country for the requisite period, this listing is not complete, as it does not include a specific address in two instances. Further, the applicant again failed to advance any explanation as to why this listing of his addresses of residence in the United States before 1988 was not included on either of the previously submitted Form I-687 applications.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted an affidavit signed by [REDACTED] stated that he saw the applicant regularly at the Sikh Temple in Stockton, California from 1982 to 1985 attending religious services, helping in the community kitchen, and assisting in other community related activities. While [REDACTED] testified that he witnessed the applicant participating in a variety of activities in the period from 1982 to 1985, he failed to provide any pertinent and specific information relating to the applicant's residence during this period. In addition, the affiant failed to provide any testimony relating to the applicant for the period prior to 1982 or subsequent to 1985. Additionally, [REDACTED] indicated that the applicant was a dedicated member of the Sikh Temple in Stockton, California without mentioning that he ever resided for any length of time at the Temple.

The applicant also submitted an affidavit signed by [REDACTED] declared that he had previously known the applicant from India and later met him in Santa Clara, California in October 1983. Mr. [REDACTED] stated that the applicant lived with him at his residence at [REDACTED] in Santa Clara, California from October 1983 to August 1984 and that he then moved to another location. Although Mr. [REDACTED] testified as to the applicant's residence in the United States from October 1983 to August 1984, he failed to provide any information relating to the applicant's residence in this country either before or after these dates.

The applicant also provided an affidavit containing the letterhead for the Gurdwara Sahib (Sikh Temple) in Stockton, California that is signed by both [REDACTED] president, and [REDACTED] secretary. In their affidavit, both parties testified that the applicant is a member of this religious institution and has been attending the temple "for years." However, neither [REDACTED] provided any testimony relating to the applicant's residence in this country for the requisite period. Further, both parties characterized the applicant's association with the temple as lasting for years without specifying the exact dates he attended

this institution. Moreover, both [REDACTED] failed to state that the applicant resided for any length of time at the Sikh Temple in Stockton, California despite the fact the applicant listed this location as his residence from 1981 to 1983 on the Form G-325A.

The applicant submitted an affidavit signed by [REDACTED] who stated that the applicant resided with him at [REDACTED], in San Jose, California from October 1984 to December 1984, [REDACTED] in San Jose, California from January 1985 to March 1985, and [REDACTED] in San Jose, California from November 1988 to October 1990. However, [REDACTED] testimony regarding the applicant's addresses for each of the stated periods directly contradicted the applicant's own listing of his addresses of residence for the same periods on the Form G-325A discussed above. In addition, [REDACTED] failed to provide any information relating to the applicant's residence in this country prior to October 1984, as well as the interim period between April 1985 and May 4, 1988.

On July 22, 2004, the district director issued a notice of intent to deny to the applicant informing him of the Service's intent to deny his LIFE Act application because he failed to submit sufficient credible evidence of continuous unlawful residence in the United States for the period in question. The applicant was granted thirty days to respond to the notice and provide additional evidence in support of his claim of residence in the requisite period.

In response, the applicant submitted two new affidavits signed by [REDACTED] respectively. In his affidavit, [REDACTED] testified that he first met the applicant at an unspecified Sikh Temple in 1981 and that he continued to see him there since such date. [REDACTED] declared that he subsequently found a job for the applicant in Yuba City, California and that in April of 1982 the applicant began residing with him at his residence in the same locale for the next five months. However, Mr. [REDACTED] testimony that the applicant resided in Yuba City, California from April 1982 to approximately September 1982 is directly contradicted by the fact that the applicant testified that he lived in Stockton, California in this period and never claimed a residence in Yuba City, California on the Form G-325A. In his separate affidavit, [REDACTED] stated that he first met the applicant at the Sikh Temple in Stockton, California in October or November of 1981 and that he continued to see him there since on occasion. [REDACTED] indicated that the applicant subsequently lived with him for a four-month period at an unspecified address. Although [REDACTED] attested to the applicant's attendance at the Temple since 1981 and that he and the applicant lived together for four months, he failed to provide any relevant and specific information detailing the applicant's residence in the United States during the period in question.

The district director determined that the applicant had failed to establish his claim of residence for the requisite period and denied the application on August 30, 2004.

On appeal, counsel asserts that the applicant had submitted sufficient evidence to support his claim of continuous residence in this country from January 1, 1982 through May 4, 1988. Counsel contends that CIS has failed to consider the difficulties that the applicant has encountered in obtaining evidence of his residence in this country in light of the fact that he was an illegal alien during the requisite period. Counsel declares that CIS made no effort to contact any individual who provided an affidavit in support of the applicant's claim of residence in the United States from prior to January 1, 1982 to May 4, 1988. In support of the appeal, counsel

submits copies of the following documents all of which enunciate the standards to be utilized in evaluating evidence including affidavits in the adjudication of legalization applications: a Service memorandum dated February 13, 1989, the excerpt dated March 27, 1989 from 66 NO. 12 Interpreter Releases 347, and the settlement reached in *Catholic Social Services, Inc. v. Ridge*, Case No. Civ S-86-1343 LKK. Specifically, these documents note that legalization applications should not be denied solely because the supporting evidence consisted of affidavits.

The applicant submitted two separate Form I-687 legalization applications both of which failed to include any listing of his addresses of residence in this country prior to December 1988 despite his claim that he continuously resided in the United States from prior to January 1, 1982 to May 4, 1988. While the applicant subsequently provided a listing of his addresses of residence on the Form G-325A that was included with his LIFE Act application, the applicant listed Sikh Temple in Stockton, California from 1981 to 1983 and Brooklyn, New York from 1985 to 1986, rather than providing specific street addresses. All of the affiants noted above who referenced the applicant's association with the Sikh Temple in Stockton, California (including two Temple officers) characterized his relationship with the Temple as that of member and regular attendee, despite his claim that he resided at the Temple from 1981 to 1983. None of the affiants who submitted supporting documents in these proceeding offered testimony to corroborate the applicant's claim that he resided at this place of worship in this period.

None of the affidavits submitted in support of the applicant's claim of residence in the United States from prior to January 1, 1982 to May 4, 1988 contains a complete attestation referencing his residence in this country for the entire period. [REDACTED] and [REDACTED] only stated that the applicant had been a member of a Sikh Temple for many years without providing any specific relevant testimony relating to his residence in this country. [REDACTED] declared that he saw the applicant regularly at the Sikh Temple in Stockton, California from 1982 to 1985 without providing any specific detailed information relating to his residence in this period, as well as no information to corroborate the applicant's claim of residence in this country either before 1982 or after 1985. [REDACTED] attested to the applicant's attendance at the [REDACTED] since 1981 and that he and the applicant lived together for four months, but failed to provide any meaningful and specific testimony detailing the applicant's residence in the United States during the period in question. Although [REDACTED] stated that the applicant attended the Sikh Temple and lived with him at his residence at [REDACTED] Santa Clara, California from October 1983 to August 1984, he failed to provide any information relating to the applicant's residence in this country either before or after these dates. The probative value of these affiants testimony is both limited and impaired by the lack of sufficient detailed information specifically relating to the applicant's claim of residence, such as locations and dates of residence for the complete requisite period.

The remaining affiants, [REDACTED] and [REDACTED], both testified that they had lived with the applicant in this country during the period in question. Mr. [REDACTED] stated that the applicant lived with him at his residence in Yuba City, California from April 1982 to approximately September 1982, while Mr. [REDACTED] declared that the applicant lived with him at [REDACTED], in San Jose, California from October 1984 to December 1984, [REDACTED], in San Jose, California from January 1985 to March 1985, and [REDACTED] Dr., in San Jose, California from November 1988 to October 1990. However, the testimony of both Mr. [REDACTED] and Mr. [REDACTED] regarding the applicant's addresses for each of the stated periods is

directly contradicted by the applicant's own listing of his addresses of residence in the United States for the same periods on the Form G-325A discussed above. This direct contradiction negates the probative value of these affidavits.

The difficulties that any LIFE Act applicant would encounter in obtaining evidence of his or her residence in this country during the requisite period are acknowledged in light of the significant passage of time as well as that applicant's illegal alien status. In this case, the applicant has submitted five affidavits that lack sufficient detail and omit critically relevant information to corroborate his claim of residence in the United States from prior to January 1, 1982 to May 4, 1988. In addition, the applicant has submitted two affidavits containing testimony that directly contradicted his own testimony regarding dates and places he resided in this country during the period in question. The absence of sufficiently detailed supporting documentation and the existence of conflicting testimony that contradicts the applicant's own claim of residence seriously undermines the credibility of the supporting documents, as well as the credibility of the applicant's claim of residence in this country for the requisite period. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Counsel fails to put forth any compelling reason that would warrant the verification of documentation that provides neither extensive nor credible information to corroborate the applicant's claim of residence. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he or she has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989).

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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 reliance upon supporting documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988. Accordingly, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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).

"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.

At part #35 of both of the Form I-687 applications submitted by the applicant, he indicated that he traveled to Mexico for a vacation from March 1987 to July 1987 when asked to list all absences from the United States since entry. Clearly, such an absence, consisting of a minimum of ninety-two days and a maximum of one hundred fifty-three days, exceeds the forty-five day limit allowed for a single absence from this country in the period between January 1, 1982 and May 4, 1988. The applicant has claimed that he traveled to Mexico for a vacation and failed to assert that he experienced any exigent circumstances that delayed his purported return to the United States. Therefore, any purported delay the applicant may have experienced in accomplishing the purposes of this trip cannot be considered to be due to an emergent reason within the meaning of 8 C.F.R. § 245a.15(c)(1). Even if the applicant had overcome that basis of the district director's denial relating to his failure to establish continuous unlawful residence in the United States from prior to January 1, 1982 to November 29, 1982, this admitted absence would have interrupted any period of continuous unlawful residence in this country that may have been established prior to the date that such absence began.

Given the fact that the applicant has acknowledged exceeding the forty-five day limit allowed for a single absence from this country in the period from January 1, 1982 to May 4, 1988, he has failed to establish having resided in continuous unlawful status in the United States for such period as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis as well.

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