



U.S. Citizenship
and Immigration
Services

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LA
MAR 03 2005

FILE:

[REDACTED]

Office: Los Angeles

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.

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, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the evidence submitted by the applicant had not established 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 for the applicant asserts that the decision denying the application is in error, as it fails to acknowledge the supporting evidence provided by the applicant without rendering any determination as to the credibility, or lack thereof, of such documentation.

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:

- An affidavit from [REDACTED] attesting to having met the applicant in [REDACTED] in Yuba City, California;
- An affidavit from [REDACTED] attesting to having known the applicant since 1982;
- An affidavit from [REDACTED] who attests to having known the applicant since December 1981, when the affiant and applicant first met at a Sikh Temple in North Hollywood, California;
- Photocopies of cash receipts dated October 25, 1987 and November 8, 1987, which are made out to the applicant from the Sikh Temple Los Angeles;
- A letter from [REDACTED] of the Sikh Temple Los Angeles, attesting to the applicant's association with that religious organization;

- An affidavit from [REDACTED] attesting to the applicant having departed the U.S. for Canada on June 10, 1987 and having returned June 29, 1987;
- An affidavit from [REDACTED] attesting to having known the applicant since December 1981. The affiant bases his acquaintance on having roomed with and shared monthly rent with the applicant from December 1981 to 1986; and
- An affidavit from [REDACTED] attesting to having been acquainted with the applicant since 1983.

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, the applicant has provided only two affidavits attesting to his residence in the U.S. prior to January 1, 1982. The letter from [REDACTED] of the Sikh Temple Los Angeles, attesting to the applicant's association with that religious organization, fails to specify exactly how long the affiant has been a member of that body. Moreover, many of the affidavits attesting to residence are not accompanied by the affiants' phone numbers, thereby failing to provide a means by which the affiants may be readily contacted for purposes of verification. Moreover, while attempting to provide information as to how the affiants and applicant initially became acquainted, the affidavits provide few details regarding the nature of their relationships or the basis for their continuing awareness of the applicant's continuous residence.

In addition, the applicant has submitted a minimal amount contemporaneous documentation, consisting in total of two (2) photocopied cash receipts dating from 1987. In light of the fact that the applicant claims to have continuously resided in the U.S. since 1981, this inability to produce additional contemporaneous documentation of residence during this period raises serious questions regarding the credibility of the claim. In addition,

The credibility of the applicant's claim is further diminished by information included in the transcript of the applicant's February 13, 2004 adjustment interview, taken in the presence of a Citizenship and Immigration Services (CIS) district officer. According to the applicant's I-687 application and supporting affidavits, his only absence from the United States occurred in June 1987, when he briefly departed the U.S. to attend a wedding in Vancouver, British Columbia, Canada, and then returned to the U.S. later that same month. However, according to the applicant's LIFE Application, his daughter had been born in India on May 6, 1988. When presented with this contradiction at his interview, the applicant testified that his wife, who resided in India, also departed for Canada in order to attend the wedding with his husband, and on this occasion in Canada during which the two purportedly reunited, became pregnant with their daughter before returning to India. However, as the applicant allegedly returned to the U.S. before the end of June 1987 and remained there through the remainder of the period in question [i.e. through May 4, 1988], it is less than credible that his daughter would not have been born until May 6, 1988 -- at least eleven months after the applicant's return to the U.S. from Canada.

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).

The applicant does not attempt to credibly explain or resolve the inconsistency regarding his daughter's birth in India eleven months after his own purported return to the U.S. and his wife's purported return to India from attending a wedding in Canada. This, along with his reliance on a minimal amount of contemporaneous evidence and affidavits which do not meet basic standards of probative value, 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. Accordingly, the applicant is ineligible for permanent resident status under section 1104(c)(2)(B) of the LIFE Act.

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