



U.S. Citizenship  
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FILE:

MSC 02 208 62338

Office: Chicago

Date: DEC 18 2006

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that 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 as required under section 1104(c)(2)(B)(i) of the LIFE Act, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended* by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000). The district director concluded that the applicant was ineligible to adjust to permanent residence under the provisions of the LIFE Act and denied the application.

On appeal, counsel asserts that the applicant did continuously reside in the United States for the period in question and disputes the determination that he did not submit sufficient supporting documentation to corroborate his claim of residence in this country.

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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to

the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

The issue to be examined in this proceeding is whether the applicant has submitted sufficient credible evidence to 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. Here, the submitted evidence is not relevant, probative, and credible.

The applicant made a claim to class membership 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 Act on July 26, 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 listed [REDACTED] from December 1981 to February 1984, [REDACTED] from March 1984 to December 1987, and [REDACTED] from January 1988 to the date the Form I-687 application was executed. Furthermore, at part #34 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc., the applicant listed "NIL."

In support of his claim of continuous residence in the United States from prior to January 1, 1982, the applicant submitted an affidavit that is signed by an individual whose last name is [REDACTED] but whose first name is illegible. The affiant indicated that the applicant is his friend and they used to meet in temple. The affiant stated that the applicant had told him that he was going to visit friends in Canada for two weeks and the applicant departed the United States on December 12, 1987 and returned to this country on December 28, 1987. However, the affiant failed to provide sufficient details and specific verifiable information relating to the applicant's residence in this country for any portion of the requisite period. In addition, the affiant admitted that his knowledge that the applicant had taken a trip from the United States to Canada for two weeks in December 1987 was based on what the applicant had told him. Consequently, the affiant's testimony must be considered as lacking in probative value because he testified as to what the applicant had told him.

The record shows that the applicant filed his Form I-485 LIFE Act application with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) on April 26, 2002. With the Form I-485 LIFE Act application, the applicant included an original envelope that is postmarked November 1, 1982, and is addressed to the applicant in care of the Sikh

Center of New York at [REDACTED]” However, the applicant failed to provide any explanation as to why he was receiving mail at this address rather than “[REDACTED]” the address of residence from December 1981 to February 1984 he listed at part #33 of the Form I-687 application. Moreover, the applicant failed to provide any explanation as to why he was receiving mail at this organization in light of the fact that he testified that he had no affiliations or associations with clubs, organizations, churches, unions, business, etc., at part #34 of the Form I-687 application.

The applicant provided an undated letter on the letterhead of the “The Sikh Cultural Center, Inc.,” at [REDACTED]. The letter contained the illegible signature of an individual who listed his position as president. This individual stated that the applicant had been a community activist in this Sikh Temple from September 1982 to February of 1984 and that he had participated in all the religious ceremonies and festivals. The author of the letter declared that the applicant had served in the kitchen and hall area and that he was dedicated, religious, and god-fearing. However, the author failed to provide any direct and specific testimony relating to the applicant’s residence in this country for the requisite period. Further, this individual failed to include the applicant’s address of residence during that period that he was a member of the Sikh Cultural Center, Inc., as required under 8 C.F.R. § 245a.2(d)(3)(v). Again, the applicant failed to provide any explanation as to why he did not list his membership in the Sikh Cultural Center, Inc., at part #34 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc.

The applicant submitted an affidavit that is signed by [REDACTED] declared that the applicant is his friend and they have known each other since 1981. [REDACTED] noted that he and the applicant used to meet other every Sunday to perform religious prayers at the Sikh Center of New York located at [REDACTED] from December 1981 to February 1984. However, [REDACTED] failed to provide any direct and specific testimony relating to the applicant’s residence in this country for that period from prior to January 1, 1982 to May 4, 1988. Further, as noted previously, the applicant listed “NIL” at part #34 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc. Neither the applicant nor [REDACTED] offered any explanation as to how they met every Sunday at the Sikh Center of New York for prayer from December 1981 to February 1984 when the applicant testified that he had no affiliations or associations with any organizations or churches on the Form I-687 application.

The applicant included a letter that is signed by [REDACTED] who indicated that he was a physician practicing in the state of New Jersey and that he attended to the applicant’s medical needs since 1982. Although [REDACTED] indicated that he had treated the applicant since 1980, he failed to provide any specific, detailed, and verifiable testimony, such as the applicant’s address(es) of residence in this country, to corroborate the applicant’s claim of residence in this country for the requisite period.

The applicant submitted an affidavit that is signed by [REDACTED] who stated that the applicant lived at [REDACTED] during the years from 1987 to 1989. [REDACTED] noted that the applicant had rented a parcel of land from him during this period and that the

applicant used this land to grow flowers he then sold in Bakersfield, Fresno, and Visalia, California. However, [REDACTED] testimony regarding the applicant's address of residence is in direct conflict with the applicant's testimony that he resided at [REDACTED] from March 1984 to December 1987, and [REDACTED] from January 1988 through at least May 4, 1988 at part #33 of the Form I-687 application.

The applicant provided an affidavit containing the letterhead of the Sikh Temple of the Pacific Coast in Selma, California that is signed by [REDACTED]. In his affidavit [REDACTED] testified that applicant served the temple from 1986 to 1989 and that he participated in all religious ceremonies and festivals in that period. However, [REDACTED] failed to provide any testimony relating to the applicant's residence in the United States from prior to January 1, 1982 to 1985. Further, [REDACTED] neither listed his position with the Sikh Temple of the Pacific Coast nor included the applicant's address of residence during that period that he was a member of this temple as required under 8 C.F.R. § 245a.2(d)(3)(v). Moreover, the applicant failed to provide any explanation as to why he did not list his membership in the Sikh Temple of the Pacific Coast in Selma, California at part #34 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc.

The district director subsequently issued a notice to the applicant on December 17, 2003, informing him of CIS's intent to deny his Form I-485 LIFE Act application. The district director noted that the applicant had failed to submit sufficient evidence to corroborate his claim of continuous residence in this country from prior to January 1, 1982 to May 4, 1988. The applicant was granted thirty days to respond to the notice.

In response, counsel submitted a statement in which he asserted that the applicant had submitted sufficient evidence in support of his claim continuous residence for the period in question. Counsel noted the difficulties in obtaining evidence of residence considering both the significant passage of time and the fact that the applicant was an illegal alien. The applicant also provided a separate statement in which he reiterated his claim of continuous residence in the United States from prior to January 1, 1982 and related his inability to provide evidence of such residence because of his undocumented status. While it is acknowledged that the applicant may very well have experienced difficulties in obtaining evidence of residence for the reasons put forth, the explanations advanced by the applicant and counsel cannot be considered as sufficient to overcome the deficiencies, conflicts, and contradictions in testimony contained in the supporting documents submitted by the applicant as has been discussed above.

The applicant included copies of previously submitted documentation as well as two new pieces of evidence to support his claim of residence. The applicant provided a residential lease agreement that is signed by [REDACTED] as landlord and the applicant and [REDACTED] as tenants for the first floor apartment at [REDACTED] in Brooklyn, New York with the term of the lease to run from June 1, 1982 to May 31, 1984. However, the applicant previously testified that he resided at [REDACTED] from December 1981 to February 1984 and [REDACTED] from March 1984 to December 1987 at part #33 of the Form I-687 application. The applicant failed to provide any explanation as to how he could have rented and resided at [REDACTED] in Brooklyn, New York as listed in the residential lease in light of his

own testimony that he resided at addresses in Flushing, New York and Costa Mesa, California respectively, in this period.

The applicant submitted an affidavit that is signed by [REDACTED] who indicated that he was a family friend of the applicant and had personal knowledge that he resided in the United States since December 1981. [REDACTED] declared that the applicant had visited him at his residence in Milwaukee, Wisconsin several times between 1984 and 1988. [REDACTED] stated that the applicant resided at [REDACTED] in Bakersfield, California during the years from 1986 to 1988. However, [REDACTED] failed to provide any specific verifiable testimony relating to the applicant's residence in the United States from prior to January 1, 1982 to 1985. In addition, [REDACTED] testimony regarding the applicant's address of residence directly contradicted the applicant's own testimony that he resided at [REDACTED] from March 1984 to December 1987, and [REDACTED] from January 1988 through at least May 4, 1988 at part #33 of the Form I-687 application.

The district director determined that the applicant had failed to demonstrate that he continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B)(i) of the LIFE Act, and therefore, denied the Form I-485 LIFE Act application on March 1, 2004.

Counsel's statements on appeal regarding the sufficiency of the evidence submitted by the applicant in support his claim of continuous residence in this country for the requisite period have been considered. However, the evidence submitted by the applicant relating to his residence in the United States from prior to January 1, 1982 lacks sufficient detail, contains little verifiable information, and is contradictory to the substance of the applicant's own testimony regarding his residence in this country for the requisite period. Although counsel contends that no attempt has been made to verify the content of testimony contained in the supporting documentation, he fails to advance any compelling reason as to why any attempt should be made in light of the minimal probative value of the applicant's evidence of residence.

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).

The absence of sufficiently detailed supporting documentation and the existence of conflicting testimony that contradicts critical elements of the applicant's claim of residence for the requisite period seriously undermine the credibility of this claim, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January

1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. at 77.

Given the applicant's reliance upon 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 as required under section 245A(a)(2) of the Act. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

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