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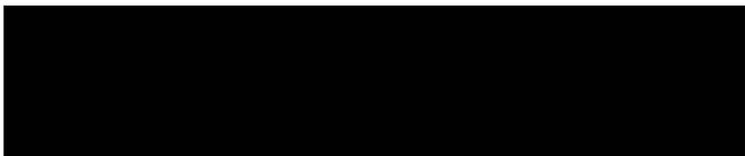
U.S. Department of Homeland Security
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U.S. Citizenship
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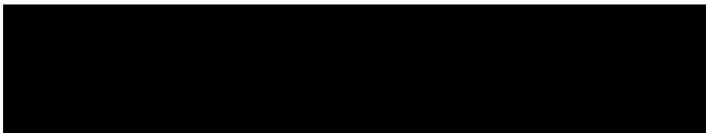
Office: Chicago

Date: DEC 22 2006

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. 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, 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 director concluded the applicant had not established that he had continuously and unlawfully resided in the United States during the entire qualifying period from January 1, 1982 through May 4, 1988 and, therefore, denied the application.

On appeal, counsel asserts that the director failed to give proper weight to the evidence submitted by 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).

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).

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.

Although the 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).

Here, the submitted evidence is not credible. To establish continuous unlawful residence since before January 1, 1982 and continuing through May 4, 1988, as claimed, the applicant submitted a May 22, 2002 sworn letter from [REDACTED], founder and pastor of the India Mission Telugu Methodist Church, stating that the applicant has been a member of the church since 1981. This affidavit conflicts with [REDACTED] statement submitted in support of a Form I-360, Petition for Amerasian, Widow or Special Immigrant, which is housed with the current application for adjustment of status. In that statement, [REDACTED] stated that the applicant joined the congregation in 1989, after entering the United States on January 23, 1989. No evidence in

the record explains this inconsistency in [REDACTED] statement. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

In a letter dated October 11, 2006, the applicant was informed of the conflicting statements provide by [REDACTED] and informed that he must submit competent, objective evidence to overcome these inconsistencies. In response, the applicant submitted a letter in which he stated that the church did not have its own building until 1989, and that until he became a member in 1989, he attended informal meetings and worship services. The applicant further stated that [REDACTED] statement "was based on what he believed was relevant for the petition the church was filing then," and that "his simple statement seemed easier that trying to explain my evolving participation with the group of worshippers that eventually became the India Mission Telugu United Methodist Church, during a period when the Church had only a limited formal existence."

The applicant's statement does not constitute objective and competent evidence to overcome the inconsistencies of [REDACTED] statements. The applicant submitted no documentary evidence to support his statement or to clarify the statements by [REDACTED]

We note that on his January 11, 1990 Form I-687, Application for Status as a Temporary Resident, the applicant stated that he last entered the United States on January 23, 1987. The applicant did not list any residence in the United States prior to December 1988 and indicated that he worked at a day/night food store as a cashier beginning in January 1987 until December 1989. During his January 1990 class interview membership, the applicant stated that he could not recall any address at which he lived prior to 1988 and stated that he worked at the day/night food store before and after hours as a cleaner. The applicant was unable to provide the interviewer with a telephone number for the store.

Nonetheless, in a May 30, 2002 sworn affidavit, the applicant provided detailed information about his living and working arrangements during the qualifying period, including addresses, duties, and names of the individuals for whom he worked, and addresses at which he lived. We find it less than credible that the applicant was able to provide such detailed information in 2002, yet was unable to recall a single address during his interview in 1990.

In his 2002 affidavit, the applicant alleged that he first entered the United States in October 1981, left the United States on December 24, 1988 and returned on January 23, 1989. This is inconsistent with his statement on the Form I-687 on which he stated that he departed the United States in December 1986 and returned in January 1987. The applicant reiterated this claim in his class membership interview, and in a January 11, 1990 sworn affidavit in which he stated that he first entered the United States on April 7, 1981. However, Citizenship and Immigration Service (CIS) records reflect that the applicant last entered the United States pursuant to a B-2, nonimmigrant visitor's visa, on January 23, 1989.

The applicant also submitted the following documentation:

- A May 20, 2002 sworn declaration from [REDACTED] stating that she has known the applicant since 1981, when they met in the India Christian Fellowship Church.
- A May 20, 2002 sworn declaration from [REDACTED] stating that he has known the applicant since approximately 1982, when they met at the First Telugu United Methodist Church.

- An April 27, 2003 sworn affidavit from [REDACTED] in which she stated that she has known the applicant since 1982, when she met him at the Telugu Community Church.
- An April 26, 2003 sworn affidavit from [REDACTED] in which she stated that she has known the applicant since the beginning of 1982, when she met him in a community youth gathering.
- An April 26, 2003 sworn affidavit from [REDACTED] who stated that she met the applicant in approximately 1982, when he came to her house for a prayer meeting.
- An April 26, 2003 sworn affidavit from [REDACTED] who stated that she has known the applicant since 1985, when he was her neighbor on the northwest side of Chicago.

The applicant submitted no contemporaneous documentation to establish his presence in the United States during the qualifying period.

Because of the unresolved inconsistencies in the record, the applicant has not established by a preponderance of the evidence that it was more likely than not that he resided in the United States from the period during the qualifying period.

Therefore, the applicant has failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

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