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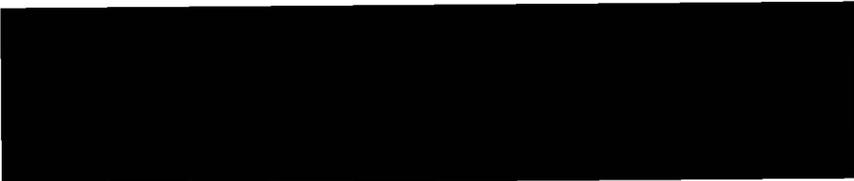
Office: SEATTLE

Date: **MAY 11 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.

Σ 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, Seattle, 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 from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant had submitted sufficient evidence to establish continuous, unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel provides copies of certain documents originally submitted in response to the issuance of a Form I-72, Request for Additional Information. He submits other documents, which were already part of the record. Finally, counsel submits an additional notarized statement that attests to the applicant's presence in the United States and various other documents meant to substantiate that the applicant was present in the United States from before January 1, 1982 through May 4, 1988 and that he exited the United States, briefly, in 1987.

An applicant for permanent resident status under section 1104 of the LIFE Act 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. 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 "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).

In the present case, this office finds the submitted evidence is not relevant, probative and credible.

On August 22, 1990, the applicant applied for class membership in a legalization class-action lawsuit and he filed a Form I-687, Application for Status as a Temporary Resident. On that application, he claimed to have entered the United States without inspection at the age of ten. On May 9, 2002, the applicant submitted a Form I-485, Application to Register Permanent Resident or Adjust Status.

In support of his claim of continuous, unlawful residence in this country since prior to January 1, 1982 through May 4, 1988, the applicant submitted nine supporting documents:

1. A notarized statement of the applicant's uncle, [REDACTED] which indicates that the applicant lived with [REDACTED] from February 1981 through August 1990.
2. An affidavit of the applicant's uncle, [REDACTED], which indicates that the applicant lived with this uncle from June 1981 through June or August 1990.
3. A notarized statement from the applicant's uncle, [REDACTED] which indicates that the applicant worked for him from June 1987 through May 1988.
4. A notarized statement of [REDACTED] a friend of [REDACTED] which indicates that he first met the applicant in 1982 at the Annual Sikh Parade in Yuba, California and that he saw him once a year during the years that followed.¹
5. A copy of an envelope addressed to a person in India and postmarked in an area of California, which is several hundred miles away from the past and current addresses that the applicant has listed on his various applications. The words "from [REDACTED]" are written in the upper left hand corner of the envelope in lieu of a return address. The postmark indicates that the letter was sent to India during 1987.
6. Same as #5 above, except that the postmark indicates that the letter was sent to India in June 1988.
7. A copy of an envelope addressed to the applicant in the United States. The postmark on the envelope appears to have been tampered with. For instance, it appears that the digit "5" in the "1985" postmark was written by hand.
8. Same as #7 above.

¹ On appeal, counsel suggests that [REDACTED] notarized statement indicates that he met the applicant in California on January 1, 1982. However, this annual Sikh parade takes place the first Sunday of November each year, not on the first day of January. See www.svix.com/yubacity/eventsannual.html

9. A notarized statement from [REDACTED] which indicates that the applicant worked for him from May 1988 through August 1990.

On August 1, 2003, the district director issued a notice of intent to deny because the applicant had failed to submit adequate, credible evidence of continuous, unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988.

In the notice of intent, the district director specified that in 1995 the applicant submitted to the Service a Form I-131, Application for Travel Document. In support of this request, the applicant attached a letter on formal, letterhead stationery from his physician, [REDACTED]. In this letter, the doctor indicated that as of October 1995 the applicant had resided in the United States for approximately five years. According to the district director, this suggested that when the applicant relayed his personal history to his doctor, who was treating him for critical "end stage renal disease", the applicant reported that he had lived in the United States since approximately October 1990. The district director made clear that this was problematic in that it contradicted the applicant's statements to the Service that he had lived in the United States since early 1981.

The notice of intent explains other problems in the record. For instance, certain envelopes that the applicant claimed to have mailed were postmarked in areas of California located several hundred miles away from the applicant's former addresses, as listed on his applications.

The notice of intent also points out certain deficiencies in [REDACTED] notarized statement, the one statement in the file that attests to the applicant's continuous presence in the United States that was not written by the applicant's uncle, [REDACTED]. In that statement, [REDACTED] who identified himself as [REDACTED]'s friend, indicated that he first met the applicant during 1982. Thus, the applicant had failed to adequately demonstrate that he had entered the United States prior to January 1, 1982.

The district director granted the applicant thirty days to respond to the notice of intent and provide additional evidence in support of his claim of continuous, unlawful residence from prior to January 1, 1982 through May 4, 1988. The applicant did not respond to the notice of intent.

The district director denied the application, based on the reasons set out in the notice of intent, on August 26, 2004.

On appeal, counsel submitted the following documents as evidence that the applicant maintained continuous, unlawful residence from before January 1, 1982 through May 4, 1988:

1. A notarized statement of [REDACTED] a friend of [REDACTED] which indicates that [REDACTED] met the applicant in California in June 1981 and that he saw the applicant once a year, thereafter, until 1990.
2. A copy of a money order issued in the United States in 1987, which makes no reference to the applicant.

3. A copy of an envelope sent to India from California in 1986, which was postmarked in an area several hundred miles away from any of the applicant's addresses in the United States. This envelope does not show the applicant's name or address and does not make any other reference to the applicant.

Counsel also resubmitted certain documents that were already part of the record. The other documents that counsel submitted, such as a notarized statement that indicates that the applicant visited Canada for less than a month during 1987, did not attempt to directly address the issue of continuous, unlawful residence during the relevant statutory period.

On appeal, counsel indicated that the district director focused on analyzing the return addresses of certain envelopes in the file, which were addressed to the applicant in the United States during the statutory period, even though the return address was not relevant to the applicant's claim. However, the district director did not do this. The district director only pointed to the return addresses of those envelopes that the applicant claimed he had sent. More precisely, the district director pointed out that these return addresses are unusual in that no actual return address is written on the envelope, only the applicant's name is listed. Even more problematic, the district director stated that these envelopes were posted in cities that are several hundred miles from the past home addresses, which the applicant listed on his various applications. The district director correctly concluded that these issues cast tremendous doubt on the applicant's claim that he mailed these envelopes and that these envelopes provide objective, contemporaneous evidence that he resided in the United States during the relevant statutory period.

Counsel also indicated that the district director erred in that he failed to consider the notarized statements and affidavits that the applicant submitted as evidence of continuous, unlawful residence during the statutory period. Yet, as noted above, the notice of intent does carefully consider the notarized statement of [REDACTED]. This is the one statement or affidavit that attests to the applicant's continuous residence, submitted prior to the appeal, which was not written by the applicant's uncle, [REDACTED].

Moreover, there are significant inconsistencies in the statements submitted by the applicant's uncle, [REDACTED]. That is, on one notarized statement, signed in August 1990, (Document 1 above), [REDACTED] specified that the applicant lived with him from February 1981 through June 1987. Yet, on a formal affidavit, which was also signed and notarized during August 1990, (Document 2 above), [REDACTED] specified that the applicant began living with him in June 1981, when he was eleven years old, and that he continued living with him until August 1990.² Moreover, certain inconsistencies exist between [REDACTED] notarized statements and those made by the applicant on his Form I-687. For instance, the applicant indicated that he did not begin living at his uncle's address until June 1981 at Part #33 of that

² June 1981 is the month that the applicant turned eleven years old. It is noted that on the same affidavit [REDACTED] indicated that the applicant moved out in June 1990, not August 1990.

form.³ Thus, given these substantial inconsistencies, this office finds that any assertions made by [REDACTED], regarding the applicant's continuous, unlawful presence in the United States, are not probative.

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 applicant had an opportunity to provide competent, objective evidence to resolve the apparent contradiction between the number of years that he told the Service he was living in the United States and the number of years that he told his doctor that he was living in the United States. However, he did not directly address this point on appeal or by providing a response to the notice of intent. On appeal, he did submit the notarized statement of [REDACTED] friend, which states that this friend saw the applicant in California in June 1981. These statements by [REDACTED] the friend of the applicant's uncle, an individual whose credibility has already been called into question, do not amount to "competent, objective evidence" sufficient to overcome the considerable doubt that has been cast on the applicant's evidence. Similarly, the applicant had the opportunity to provide competent, objective evidence to resolve the apparent inconsistency found in the fact that the envelopes, which he claimed to have mailed and that he submitted to verify his presence in the United States, were not mailed in the part of the country in which he claimed to have been living. However, he never directly addressed this issue on appeal or in a response to the notice of intent.

It is, therefore, concluded that the applicant 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 not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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

³ It is noted that on his Form I-687 the applicant indicated that, in February 1981, he entered the United States without inspection. Yet, when asked to list all his addresses since arriving in the United States, he indicated that he began living at his uncle's address in June 1981 and he failed to provide any address for February 1981 through May 1981.