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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 170 61244

Office: SAN FRANCISCO

Date: SEP 11 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:

SELF-REPRESENTED

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. Any further inquiry must be made to that office.

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, San Francisco, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because 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.

On appeal, the applicant asserts that his illegal status makes it almost impossible to create a paper trail of his presence and residency in the United States during the required period. The applicant submits additional documentation in support of his appeal.

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. Section 1104(2)(c)(B) of the LIFE Act; 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 Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant stated that he first entered the United States illegally in January 1981 and had a single absence during the qualifying period from June to July 1987. The applicant stated that he was self-employed from 1981 until the date of the Form I-687, Application for Status as a Temporary Resident, which he signed on August 22, 1989.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted the following evidence:

1. A November 1, 1989 sworn declaration from [REDACTED], in which he stated that he has been a friend with the applicant since 1981, and that they used to attend the same temple.
2. A November 1, 1989 sworn declaration from [REDACTED] in which he stated that he has met the applicant on and off since 1981 over dinners, family functions and at the Sikh temple.
3. A November 1, 1989 sworn declaration from [REDACTED] in which he stated that he has known the applicant since 1981, and that they have met on many occasions, such as Sikh temple, parties and dinners. He describes the applicant as a good friend.
4. An undated letter from the [REDACTED] certifying that the applicant had been a member of the temple since 1981. [REDACTED] who identifies himself as the assistant secretary, signed the letter. The letter does not indicate whether this information was taken from official temple records and does not indicate the applicant's address during the required period. 8 C.F.R. § 245a.2(d)(3)(v). The district office was unable to verify the information, as the phone numbers listed on the temple's letterhead were not operable. On appeal, the applicant states that the letter was issued in 1990 and submits a letter dated November 29, 2004 from [REDACTED] who identified himself as the head priest of the [REDACTED] and who verified that the applicant has been a member of the temple since 1981. This information, however, conflicts with that provided by [REDACTED] who stated that the applicant had been a member of the [REDACTED] in Yuba City, California from 1981. The applicant submitted no evidence that the Fremont temple and the Yuba temple are associated or otherwise share members. 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 applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).
5. A September 15, 2001 notarized affidavit from [REDACTED] in which he stated that he knew the applicant before he came to the United States in 1981, and that since arriving in the United States, the applicant has supported himself doing odd jobs.
6. A September 30, 2003 notarized affidavit from [REDACTED] in which he stated that the applicant lived in his home when he first came to Yuba City in January of 1981, and that they occasionally met at the Sikh temple and at Indian festival celebrations. The affiant did not answer phone calls from the district office.
7. A September 28, 2003 sworn statement from [REDACTED] in which he stated that he has known the applicant since 1981 when they met at the Sikh temple in Yuba City.
8. A September 28, 2003 sworn statement from [REDACTED] in which he stated that he has known the applicant for the past 23 years and that he saw him on fifth Sundays "attending home spiritual discourses."
9. A September 3, 2003 sworn statement from [REDACTED] and [REDACTED] in which they stated that they met the applicant for the first time in April 1981 at the Sikh temple in Yuba City. The [REDACTED] further stated that they hired the applicant to do odd jobs after they bought a hotel in November 1985. In

a September 21, 2004 telephone interview, Mr. [REDACTED] stated that they owned the hotel from 1986 to 1991, and that the applicant worked for them on the weekends. However, Mr. [REDACTED] indicated that he was unsure about dates prior to 1986.

10. An October 8, 2003 sworn statement from [REDACTED] who indicated that he was a priest for the [REDACTED] in Yuba City, California. He indicated that the applicant had been a member of the temple since 1981. This conflicts with the earlier letter from [REDACTED] who stated that the applicant had been a member of the [REDACTED] in Fremont, California since 1981. The district's call to the telephone number contained on the statement of [REDACTED] was answered by someone who denied that the number belonged to the Sikh temple and responded with "no English" when asked if he was [REDACTED]. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa application. *Matter of Ho*, 19 I&N Dec. at 591.
11. A September 28, 2003 sworn statement from [REDACTED] in which she stated that she has known the applicant since 1983.

The applicant states that he performed odd jobs during the qualifying period. However, except for the single statement from the [REDACTED] who stated that the applicant worked on weekends at the hotel that they bought in 1986, the applicant submitted no evidence that he worked for any one else from 1981 to 1988. The applicant submitted no contemporaneous documentation to establish his presence and residency in the United States during the required period.

While affidavits in certain cases can effectively meet the preponderance of evidence standard, the third party affidavits and statements submitted by the applicant are not credible as they contain conflicting or unverifiable information. Accordingly, it is concluded that he has failed to establish continuous residence in the U.S. for the required period.

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