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FILE: [REDACTED]
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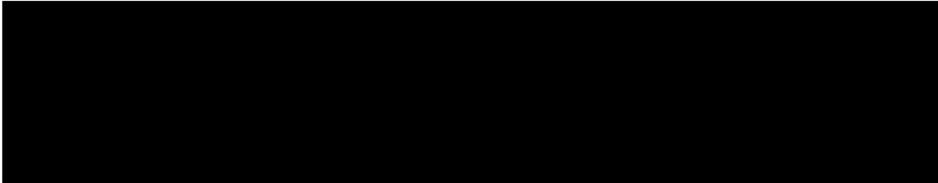
Office: SAN FRANCISCO

Date: APR 10 2007

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. Wernmann, 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, and is now before the Administrative Appeals Office 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 director erred in finding that the applicant had not submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988.

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 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. 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 applicant 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 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.

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).

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. See 8 C.F.R. § 245a.2(d)(3)(v).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must be on employer letterhead stationery, if the employer has such stationery, and must include the following:

- (A) Alien's address at the time of employment;
- (B) Exact period of employment;
- (C) Periods of layoff;
- (D) Duties with the company;
- (E) Whether or not the information was taken from official company records; and
- (F) Where records are located and whether the Service may have access to the records.

The regulation further allows that if official company records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and explaining why such records are unavailable may be submitted in lieu of meeting the requirements at (E) and (F) above.

Here, the submitted evidence is not relevant, probative, and credible.

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

- An affidavit notarized on April 10, 2003 from [REDACTED] stating that he has had "good relation" with the applicant since they met in Yuba City, California on April 13, 1986.
- An affidavit notarized on April 5, 2003 from [REDACTED] Head Priest at the Sri Guru Nanak Singh Temple, stating that the applicant attended the temple regularly from 1981 until he moved to the "Bay Area" in 1991, after which he attended occasional functions at the temple.
- An affidavit notarized on March 18, 1991 from [REDACTED] a, owner of Super Stop Food and Liquor in Yuba City, California, stating that he employed the applicant part-time from April 1987 to July 1990 depending upon an "off and on" workload.

- An affidavit notarized on March 4, 1991 from ██████████ Manager of Sampson Furniture in Sacramento, California, stating that the applicant worked part-time at the company and lived at an attached residence from October 1981 to May 1986.

On January 15, 2003, the director issued a document entitled “Intent to Deny – Request for Evidence” stating that the evidence submitted by the applicant was “not sufficient to warrant favorable consideration” and requesting, along with other documents, further evidence of the applicant’s continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988. The director indicated that “failure to submit the requested documentation” within 90 days could “result in a denial.”

In a decision to deny the application dated October 18, 2004, the director noted that “the only evidence [the applicant] provided to establish that [he was] in the United States before 1988 was essentially unsupported affidavits or questionable documents.” The director determined that the evidentiary value of these affidavits was “minimal” and stated that “[a]bsent any other evidence, [the applicant’s] claim of continuous residence . . . is without merit.” In particular, the director observed that the affidavits submitted by the applicant relied “completely on the veracity of the affiant’s memory many years after the fact without credible accounts indicative of a continuous residence” and lacked “detail and verifiable facts beyond illustrations typical of a short visit.”

The director also found that applicant’s testimony at his interview on January 15, 2003 contradicted information found in the affidavits. The director noted that the applicant testified that he moved to Seattle, Washington because he lost his job, but the affidavit from his employer prior to the move indicated only that the applicant worked “part time on and off.” The director also observed that the applicant’s priest testified in his affidavit that the applicant moved to the “Bay Area” in 1991, which contradicts the applicant’s testimony concerning his residences.

On appeal, counsel contends that the director failed to properly analyze the applicant’s evidence and erred in denying the application for lack of documentary corroboration of affidavits. Counsel notes that the court in *Matter of E-M-* found that failure to provide documentation other than affidavits is not fatal to a claim of eligibility under the LIFE Act. Counsel asserts that the affidavits submitted by the applicant are consistent with other evidence in the record and are “complete and specific as to the dates during which the affiants saw, met or otherwise had personal contact with” the applicant. Counsel contends that the only actual “inconsistency” in the evidence is the statement by the applicant’s priest that the applicant moved to the “Bay Area” in 1991, which seemingly contradicts that applicant’s assertion that he moved to Seattle, Washington in that year. Counsel asserts that this is a “minor” inconsistency adequately explained through evidence submitted by the applicant showing that he claimed residency both in the State of Washington (identification card) and in Oakland, California (tax returns) in 1991.

Upon review of all the evidence in the record, the AAO determines that the submitted evidence is not sufficiently relevant, probative, and credible to meet the applicant’s burden of proof.

The AAO notes that although the “Intent to Deny – Request for Evidence” issued by the director on January 15, 2003 did not comply with all the requirements for such notices found in the regulations at 8 C.F.R. § 245a.20(a)(2), the applicant has not been unduly prejudiced by this error. The regulation at 8 C.F.R. § 245a.20(a)(2) requires that when an adverse decision is proposed, an applicant for LIFE legalization must be notified of the intention to deny the application and the basis for the proposed denial, and granted a period of 30 days to respond to this notice. The notice issued to the applicant on January 15, 2003 was inadequate in that it did not specifically inform the applicant that the director intended to deny his application for the reasons later enumerated in the decision. However, the notice did inform that applicant that the director would likely deny the application if additional evidence of residency was not presented, and the applicant failed to submit additional evidence or otherwise respond to the notice. The applicant has been given ample notice of and opportunity to address the specific reasons for which his application was denied in order to make a meaningful appeal.

Although the AAO concurs with counsel that the evidence of residency submitted by the applicant is generally consistent, the AAO determines that this evidence is inadequate to prove that the applicant entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date through May 4, 1988. Specifically,

- The affidavit from [REDACTED] does not contain the dates of the applicant's continuous residence to which [REDACTED] can personally attest, the address(es) where the applicant resided throughout the period in which [REDACTED] has known the applicant, the basis for [REDACTED]'s acquaintance with the applicant, or the origin of the information to which [REDACTED] being attests. [REDACTED] states only that he met the applicant in Yuba City, California in 1986 and that they now have a good relationship. As such, [REDACTED] affidavit is of minimal probative value in proving the applicant's residency in the United States during the qualifying period.
- The affidavit from [REDACTED] does not list the applicant's address at the time of employment, his duties with [REDACTED]'s company, whether or not the information in the affidavit was taken from official company records, where these records are located and whether USCIS may have access to these records. [REDACTED] does not state that the applicant's employment records are unavailable. More importantly, [REDACTED] only attests to employing the applicant “off and on” depending on workload. [REDACTED] does not list the specific periods during which the applicant was “off” as required by regulation, but his description of the applicant's employment is insufficient to demonstrate the applicant's *continuous* residency during the overall period of claimed employment from April 1987 to July 1990. The applicant states that he lived with friends during this period, but does not provide the names of these friends or offer any evidence from these friends to corroborate this claim.
- Like the affidavit from [REDACTED] the affidavit from [REDACTED] also attests only to the applicant working part-time depending on workload.

- The affidavit from [REDACTED] does not contain the address(es) of the applicant during the time he was a member of the temple, or adequately indicate the origin of the information to which [REDACTED] attests. The affidavit does not contain significant details of the applicant's activities at the temple.

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is 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). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Because of the insufficiencies in the evidence submitted by the applicant, the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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