



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: San Francisco
MSC 01 324 60316

Date: APR 11 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:

[REDACTED]

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, San Francisco, California, 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 failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988.

On appeal, counsel contends that the applicant had submitted sufficient evidence to support his claim of continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel asserts that no attempts have been made to contact the affiants that provided supporting documentation and verify their testimony.

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.

At issue 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 file three separate Forms I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act), dated June 28, 1990, August 8, 1990, and September 3, 1990, respectively. At part #33 of the Form I-687 application dated June 28, 1990, where applicants were asked to list all residences in the United States since the date of their first entry, the applicant listed the following:

Address	Length of Residence
[REDACTED] in San Jose, California	February 1980 to December 1985
[REDACTED] in San Jose, California	April 1986 to June 1987
[REDACTED] Canoga Park, California	January 1988 to June 28, 1990 (the date the Form I-687 was executed)

The fact that the applicant failed to list any residences in the United States for those periods from December 1985 to April 1986 and June 1987 to January 1988 suggested he was not living in the United States during those periods and diminished the credibility of his claim of continuous residence in this country from prior to January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). In addition, the applicant subsequently offered contradictory testimony by listing the following residences and periods of residence at part #33 in the other two Form I-687 applications dated August 8, 1990 and September 3, 1990:

Address	Length of Residence
[REDACTED] in San Jose, California	February 1980 to December 1989
[REDACTED] in San Jose, California	after January 1990

At part #34 of the Form I-687 application dated June 28, 1990, where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc., the applicant failed to list any affiliations or associations. Furthermore, at part #34 of the Form I-687

application dated August 8, 1990, the applicant wrote "N/A" when asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc. However, at part #34 of the Form I-687 application dated September 3, 1990, the applicant indicated that he was associated with the Sikh Temple in Fremont, California from 1981 to the date this particular Form I-687 application was executed. While the applicant submitted supporting documents that reflect his purported association with this Sikh Temple as well as another Sikh Temple in Yuba City, California, he failed to provide any explanation as to why he failed to list any affiliations or associations with clubs, organizations, churches, unions, businesses, etc., at part #34 of the Form I-687 applications dated June 28, 1990 and August 8, 1990.

At part #35 of the Form I-687 application dated June 28, 1990 where applicants were asked to list all absences from the United States beginning from January 1, 1982, the applicant listed an absence from this country from July 4, 1987 to October 12, 1987 when he traveled to Canada "to be immigrant." With the Form I-687 application dated June 28, 1990, the applicant included a "Corroborative Affidavit" relating to his admitted absence that is signed by [REDACTED] and dated July 2, 1990. Mr. [REDACTED] testified that he gave the applicant a ride to the border between the Canada and the United States near Blaine, Washington on July 4, 1987 and that he subsequently picked the applicant up on October 12, 1987. Based upon the applicant's own testimony on the Form I-687 application dated June 28, 1990 and the testimony of [REDACTED] in his "Corroborative Affidavit" dated July 2, 1990, it must be concluded that the applicant's admitted absence from the United States from July 4, 1987 to October 12, 1987 constituted one hundred days. Furthermore, the applicant again contradicted his own testimony by reducing the claimed length of this absence to thirty-three days from July 4, 1987 to August 6, 1987 at each part #35 of the Form I-687 applications dated August 8, 1990, and September 3, 1990, respectively. Additionally, [REDACTED] contradicted his prior testimony by stating that he gave the applicant a ride to the border between the Canada and the United States near Blaine, Washington on July 4, 1987 and then subsequently picked the applicant up on August 6, 1987 in a separate "Corroborative Affidavit" dated August 15, 1990. The contradictory testimony offered by both the applicant and [REDACTED] relating to the length of this absence from the United States this diminished the credibility of both parties as well as the credibility of the applicant's claim of continuous residence in the requisite period.

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 [REDACTED] and dated June 28, 1990. Mr. [REDACTED] listed his own address of residence as [REDACTED] in San Jose, California and stated that he had known the applicant since 1980. However, Mr. [REDACTED] failed to provide any specific and verifiable testimony that would corroborate the applicant's claim of residence in this country for the requisite period despite the fact that the applicant testified that he lived at the same address as Mr. [REDACTED] from February 1980 to December 1985 at part #33 of the Form I-687 application dated June 28, 1990 and from February 1980 to December 1989 at part #33 of the Form I-687 applications dated August 8, 1990 and September 3, 1990.

The applicant included another separate affidavit that is signed by [REDACTED] and dated July 19, 1990. In this subsequent affidavit, Mr. [REDACTED] revised his testimony by declaring that the applicant lived with him at his residence, [REDACTED] in San Jose, California, from February 1980 to

December 1989. Mr. [REDACTED] noted that the applicant did not pay rent during this period because he did not hold regularly paying jobs. However, Mr. [REDACTED] failed to provide any explanation as to why he did not mention that the applicant lived with him during the requisite period in his prior testimony contained in his affidavit dated June 28, 1990.

The applicant provided a form letter containing the letterhead of the [REDACTED] Company that purportedly informed him he had been hired as an assembler for this enterprise and should report to an orientation program at 7:30 on October 26, 1981. However, the only information contained in this letter relating to the applicant is the handwritten notation "[REDACTED]" Further, it must be noted that the applicant failed to list any employment for [REDACTED] at part #36 of the three Form I-687 applications where applicants were asked to list all employment in the United States since first entry, but instead indicated that he was a laborer who did odd jobs.

The applicant submitted photocopies of two receipts from the Sikh Temple in Fremont, California dated January 4, 1981 and October 14, 1983, respectively that purportedly reflect contributions made by the applicant to this religious organization.

The applicant included a letter containing the letterhead of the _____ in Fremont, California that is signed by [REDACTED] who listed his position as general secretary. In his letter, Mr. [REDACTED] stated that the applicant regularly visited this religious institution since 1981. Mr. [REDACTED] declared that applicant was very devout and that the applicant regularly attended and took part in congregational services as well as community activities. However, Mr. [REDACTED] failed to include the applicant's address of residence during that period that he was a member of the [REDACTED] in Fremont, California as required under 8 C.F.R. § 245a.2(d)(3)(v).

The applicant provided a letter containing the letterhead of the Sri [REDACTED] Sikh Temple in Yuba City, California that is signed by [REDACTED] who listed his position as priest. In his letter, Mr. [REDACTED] indicated that the applicant had visited this religious institution and participated in religious activities and celebrations as a volunteer for the last four or five years. However, Mr. [REDACTED] failed to provide any direct and specific testimony relating to the applicant's residence in this country for the requisite period. Further, Mr. [REDACTED] failed to include the applicant's address of residence during that period that the applicant was affiliated with [REDACTED] Sikh 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 affiliation with this religious organization at part #34 of the three Form I-687 applications he submitted.

The applicant submitted an affidavit signed by [REDACTED] who stated that he had personal knowledge of the applicant's continuous residence in the United States since 1982. While Mr. [REDACTED] attested to the applicant's residence in this country since 1982, 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 since such date. In addition, Mr. [REDACTED] failed to provide any testimony that the applicant resided in the United States prior to January 1, 1982.

The applicant included an affidavit that is signed by [REDACTED] Mr. [REDACTED] noted that he had personal knowledge of the applicant's residence in Fremont, California from 1982 to March 1984 and from January 1985 to June 1987 because he continuously met the applicant on Sundays at the Sikh Temple located in Fremont. However, Mr. [REDACTED] failed to attest to the applicant's residence in the United States in those periods prior to 1982, from April 1984 until January 1985, and from July 1987 through May 4, 1988.

The applicant provided an original envelope that is addressed to the applicant at [REDACTED] in San Jose, California, is postmarked January 27, 1981, and bears Indian postage stamps. The applicant also submitted another original envelope that is addressed to the applicant at [REDACTED] in San Jose, California, is postmarked August 12, 1987, and bears Indian postage stamps. However, the applicant failed to provide any explanation as to how he was receiving mail at the [REDACTED] address when he testified that he did not reside at such address until January 1990 at part #33 in the other two Form I-687 applications dated August 8, 1990 and September 3, 1990.

Subsequently, on August 20, 2001, the applicant filed his Form I-485 LIFE Act application. The applicant failed to include any additional evidence in support of his claim of residence in this country for the requisite period.

On December 11, 2003, the district director issued a notice of intent to deny to the applicant informing him of CIS's intent to deny his application because he failed to submit sufficient evidence of continuous unlawful residence in the United States from January 1, 1982 through May 4, 1988. The applicant was granted ninety days to respond to the notice.

In response, the applicant submitted a statement in which he reiterated his claim of continuous residence in the United States since prior to January 1, 1982. The applicant provided an explanation relating to the circumstances surrounding his receipt of a "landed document" from Canada. The applicant also provided a listing of his absences from this country including an absence from July 4, 1987 to August 6, 1987. However, the applicant failed to provide any explanation as to why he, at part #35 of the Form I-687 application dated June 28, 1990, and [REDACTED] in an affidavit dated July 2, 1990, both initially testified that this absence occurred from July 4, 1987 to October 12, 1987.

The district director determined that the applicant failed to submit sufficient credible evidence demonstrating his residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988, and, therefore, denied the Form I-485 LIFE Act application on September 27, 2006.

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. Moreover, the applicant himself has provided contradictory testimony relating to his addresses of residence in this country and the length of his admitted absence from the United States during the period in question.

As noted previously, the applicant provided an original envelope that is addressed to him at 1836 [REDACTED], in San Jose, California, is postmarked January 27, 1981, and bears Indian postage stamps. The applicant submitted this envelope with the Form I-687 application dated August 8, 1990. One of the Indian stamps on this envelope is worth fifty paise, commemorates the Indian dairy industry, and depicts a woman carrying a jar on her head, dairy cows, and milk containers. This stamp is listed at page 828 of Volume 3 of the *2007 Scott Standard Postage Stamp Catalogue Volume 5* (Scott Publishing Company 2006) as catalogue number 914 A537. The catalogue lists the date of issue for this stamp as January 25, 1982. The fact that an envelope postmarked January 27, 1981 bears a stamp that was not issued until well after the date of this postmark establishes that the applicant utilized a document in a fraudulent manner and made material misrepresentations in an attempt to establish his residence within the United States for the requisite period.

Section 212(a)(6)(C) of the Immigration and Nationality Act (Act) provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

By engaging in such action, the applicant seriously diminished his own credibility as well as the credibility of his claim of continuous residence in this country for the period from prior to January 1, 1982 to May 4, 1988. In addition, the applicant rendered himself inadmissible to the United States under any visa classification, immigrant or nonimmigrant pursuant to section 212(a)(6)(C) of the Act by committing acts constituting fraud and willful misrepresentation.

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 AAO issued a notice to both the applicant and counsel on March 7, 2007 informing the parties that it was the AAO's intent to dismiss the applicant's appeal based upon the fact that the applicant utilized the postmarked envelope cited above in a fraudulent manner and made material misrepresentations in an attempt to establish his residence within the United States for the requisite period. The AAO noted that the applicant himself had provided contradictory testimony relating to his addresses of residence in this country and the length of his admitted absence from the United States during the period in question. The AAO further informed the applicant that he was inadmissible to the United States under section 212(a)(6)(C) of the Act as a result having made material misrepresentations. Counsel and the applicant were granted fifteen days to provide

substantial evidence to overcome, fully and persuasively, these findings. However, as of the date of this decision neither the applicant nor counsel has submitted a statement, brief, or evidence addressing the adverse information relating to the applicant's claim of residence in the United States since prior to January 1, 1982.

The absence of sufficiently detailed supporting documentation, the contradictory nature of testimony relating to the applicant's absence and addresses of residence, and the existence of derogatory information that establishes he used a postmarked envelope in a fraudulent manner all seriously undermine the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.12(e), 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 or she has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E-- M--*, 20 I&N Dec. 77.

Given the applicant's reliance upon documents with minimal or no 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 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

In addition, the fact that the applicant utilized a document in a fraudulent manner and made material misrepresentations in an attempt to establish his residence within the United States for the requisite period rendered him inadmissible to this country pursuant to section 212(a)(6)(C) of the Act. By filing the instant application and submitting falsified documents, the applicant has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact. Because the applicant has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that he submitted falsified documents, we affirm our finding of fraud. This finding of fraud shall be considered in the current proceeding as well as any future proceeding where admissibility is an issue. The applicant failed to establish that he is admissible to the United States as required by 8 C.F.R. § 245a.12(e). Consequently, the applicant is ineligible to adjust to permanent residence under section 1104 of the LIFE Act on this basis as well.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center [or other office] does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1), as follows:

An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

The applicant testified that he traveled to Canada "to be immigrant" from July 4, 1987 to October 12, 1987 at part #35 of the Form I-687 application dated June 28, 1990. The applicant included a "Corroborative Affidavit" dated July 2, 1990 that is signed by [REDACTED] who testified that he gave the applicant a ride to the border between the Canada and the United States near Blaine, Washington on July 4, 1987 and that he subsequently picked the applicant up on October 12, 1987. Based upon the applicant's own testimony on the Form I-687 application dated June 28, 1990 and the testimony of [REDACTED] in his "Corroborative Affidavit" dated July 2, 1990, it must be concluded that the applicant's admitted absence from the United States from July 4, 1987 to October 12, 1987 constituted one hundred days. Clearly, such an absence exceeds the forty-five day limit allowed for a single absence from this country in the period between January 1, 1982 and May 4, 1988. The applicant has claimed that he traveled to Canada "to be immigrant" and failed to assert that he experienced any exigent circumstances that delayed his return to the United States. Therefore, any purported delay the applicant may have experienced in accomplishing the purposes of this trip cannot be considered to be due to an emergent reason within the meaning of 8 C.F.R. § 245a.15(c)(1). Even if the applicant had overcome that basis of the district director's denial relating to his failure to establish continuous unlawful residence in the United States during the requisite period, this admitted absence would have interrupted any period of continuous unlawful residence in this country that may have been established prior to the date that such absence began.

Given the fact that the applicant has acknowledged exceeding the forty-five day limit allowed for a single absence from this country in the period from January 1, 1982 to May 4, 1988, he has failed to establish having resided in continuous unlawful status in the United States for such period as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis as well.

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

FURTHER ORDER: The AAO finds that the applicant knowingly submitted fraudulent documents in an effort to mislead Citizenship and Immigration Services and the AAO on elements material to his eligibility for a benefit sought under the immigration laws of the United States. Accordingly, he is inadmissible under section 212(a)(6)(C) of the Act.