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**U.S. Citizenship
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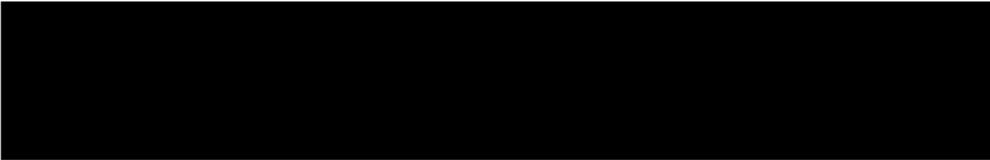
FILE:  Office: LOS ANGELES
MSC 02 029 61581

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IN RE: Applicant: 

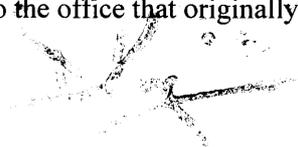
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000)

ON BEHALF OF APPLICANT:



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, Los Angeles, 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, counsel states that the director abused her discretion in denying the application as the applicant submitted various verifiable affidavits and declarations, as well as his own sworn testimony. Counsel submits a brief and additional documentation in support of the 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(c)(2)(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 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 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).

In an affidavit to determine class membership, which he signed under penalty of perjury on September 6, 1990, the applicant stated that he first entered the United States in October 1980. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury on September 6, 1990, the applicant stated that his only absence during the requisite period was from September 17 to October 22, 1987, when he visited a friend in Canada. The applicant also stated that he worked for [REDACTED] in Delano, California from December 1980 to August 1985 and at [REDACTED]

██████████ from August 1985 to July 1990. The applicant also stated that, during the same period, he lived at ██████████ in Delano, California (the address of ██████████ from October 1980 to August 1985, and at ██████████ in Long Beach, California from August 1985 to July 1990.

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 September 17, 1990 sworn statement from ██████████, who listed his address as ██████████ in Delano. ██████████ stated that the applicant worked for him at his farm, and that he provided accommodations for the applicant at the farms. ██████████ did not state the name or address of the farm or the dates that the applicant worked there. In a September 5, 1990 affidavit, ██████████ listed his address as ██████████ and stated that he has known the applicant since August 10, 1990, and that the applicant was living in the affiant's house at ██████████ in Delano, free of charge. In yet another affidavit dated August 13, 1990, ██████████, who signed the affidavit as ██████████ listed his address as ██████████ in Delano and stated that he has "first hand knowledge" that the applicant had lived in the United States since October 1980. In another sworn statement dated September 13, 1990, ██████████ again identified his address as ██████████ in ██████████ and stated that the applicant had lived at ██████████ in Delano from October 1980 to August 1985. ██████████ further stated that he was the applicant's "relative" and that the applicant "had been living with us and now." The record contains no competent documentary evidence to resolve these inconsistencies in ██████████ statements. 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).
2. An August 15, 1990 affidavit from ██████████, in which he stated that he had first hand knowledge that the applicant had lived in the United States since October 1980. ██████████ did not state the basis of his knowledge of the applicant's presence and residency in the United States.
3. An August 14, 1990 affidavit from ██████████, in which he stated that he had first hand knowledge that the applicant has lived in the United States since June 1984. ██████████ did not state the basis of his knowledge of the applicant's residency.
4. An October 21, 1984 receipt for the applicant from the Sikh Temple Los Angeles. The receipt does not list an address for the applicant.
5. A September 13, 1990 sworn statement from ██████████ in which he stated that the applicant worked for him from August 1985 to July 1990 at ██████████. The applicant submitted no corroborative documentation such as pay stubs, pay vouchers, or similar documentation of his employment with ██████████. The applicant also submitted no corroborative documentation that ██████████ existed and was doing business at the time indicated.
6. A September 13, 1990 affidavit from ██████████ in which she stated that the applicant had lived at ██████████ in Long Beach from August 1985 to July 1990. ██████████ stated that she lived at ██████████ in Long Beach, and that her relationship to the applicant was that of "tenant." There is no

evidence in the record that the applicant served in the capacity as a landlord during any of his employment.

7. Pay stubs from [REDACTED] in Wilmington, California dated January 2, 1986 and December 5, 1986. The applicant did not indicate in any of his statements that he worked for [REDACTED]
8. An "affidavit" signed by [REDACTED] affirming that the applicant "left the country" on September 17, 1987 and returned on October 22, 1987. The statement does not indicate the relationship that [REDACTED] had with the applicant or the basis of his knowledge regarding the applicant's absence from the country.
9. A bank passbook from First Interstate Bank for the applicant reflecting an initial entry date of December 15, 1987 and a last entry date of October 31, 1990, and a deposit receipt dated February 16, 1988 from the same bank.

In response to the director's Notice of Intent to Deny (NOID) dated December 1, 2004, the applicant submitted additional documentation consisting of purchase receipts from various companies and dated in 1981, 1982, 1983 and 1985. However, none of these documents reflect the applicant's name or address and thus are not probative of the applicant's presence and residency in the United States during the required period.

On appeal, the applicant submitted the following:

1. A copy of an August 31, 1990 affidavit from [REDACTED] confirming that the applicant worked for him from January 1985 to July 1990. However, the applicant submitted no other corroborative documentation regarding his employment with [REDACTED]
2. A copy of a March 19, 2005 sworn declaration from [REDACTED] in which he stated that he met the applicant around July 1981 at a friend's house, and that they have since become good friends.
3. A copy of a March 19, 2005 sworn declaration from [REDACTED], in which he stated that he met the applicant around July 1981 at a friend's house, and that he has a "family relation" with the applicant.

The applicant also submitted a March 18, 2005 declaration in which he reaffirmed the information previously provided.

The applicant has submitted several affidavits and third-party statements attesting to his continuous residence in the United States during the period in question. Affidavits in certain cases can effectively meet the preponderance of evidence standard; however, many of the affidavits and statements submitted by the applicant are either inconsistent or vague in their details. For example, [REDACTED] who stated that he was the applicant's relative, stated in a September 5, 1990 affidavit that he had known the applicant since August 1990, and in an August 13, 1990 affidavit that he had first hand knowledge that the applicant had lived in the United States since October 1980. [REDACTED] also identified at least three separate addresses at which he resided when he submitted his various affidavits and statements in support of the applicant's application. Further, the applicant submitted documentation indicating that he worked at [REDACTED]

Market, although he did not claim to have worked for this employer on his Form I-687 application. In addition, affidavits from [REDACTED] and [REDACTED] do not provide the basis of their knowledge of their knowledge of the applicant or his continued residency in the United States. The applicant submitted no contemporaneous documentation of his presence and residency in the United States prior to 1984. Given this, it is concluded that the applicant has failed to establish continuous residence in the U.S. for the required period.

The record reflects that the applicant was arrested on February 2, 2003 for spousal battery in violation of California Penal Code 243(e)(1). The district attorney rejected the case for prosecution for lack of evidence. Case no. [REDACTED]

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