

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



L2

FILE: [REDACTED]
MSC 02 029 61667

Office: NEW YORK

Date: DEC 20 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. The file has been returned to the National Benefits Center. 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. 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, New York, New York, 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 failed to demonstrate that he entered the United States prior to January 1, 1982. The director also noted that the testimony and information in the applicant's Form I-687, Application for Status as a Temporary Resident, were contradicted by the evidence on record.

On appeal, counsel asserts that the Form I-687 contains a typographical error by the preparer, an immigration center. Counsel maintains that the applicant first came to the United States in 1981. Counsel further asserts that the director applied an incorrect standard in evaluating the submitted affidavits provided by the applicant.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 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).

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that letters from churches, unions or other organizations attesting to the applicant's residence must: identify the applicant by name; be signed by an official whose title is shown; show inclusive dates of membership; state the address where the applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization; establish how the author knows the applicant; and establish the origin of the information being attested to.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States prior to January 1, 1982, and continuously resided in an unlawful status through May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

In the Notice of Intent to Deny (NOID), dated February 24, 2006, the director stated that the applicant failed to establish that he entered the United States prior to January 1, 1982. The director noted that the record contained a Form G-639, Freedom of Information Act. On the Form G-639, the applicant indicated that his date of entry into the United States was in August 1990 through the Canadian border. The director stated that the record contained no evidence that the applicant was in the United States prior to 1990. The director granted the applicant thirty (30) days to submit additional evidence.

In a rebuttal to the Notice of Intent, dated March 15, 2005, the applicant stated that he did not remember filing such application, and if he did, it was a typographical error. He reasserted that he entered the United States for the first time on July 15, 1981, with fellow aliens by crossing the Mexican border to San Diego, California.

The applicant also submitted two affidavits by [REDACTED] and [REDACTED]. [REDACTED] stated that he has known the applicant as a friend since 1985. Mr. [REDACTED] also stated that he would meet the applicant at their [REDACTED] home from 1985 to 2003. [REDACTED] stated that she has known the applicant since 1982 and that the applicant has resided in the United States since 1981. Ms. [REDACTED] also stated that she would meet the applicant at their Sikh temple from 1985 to 2004. Both affiants provided their address and a copy of their identification as evidence of their status in the United States.

In the Notice of Decision, dated March 24, 2006, the director determined that the submitted documentation was insufficient to overcome the grounds for denial detailed in the NOID. On appeal, counsel contends that the applicant submitted ample substantial evidence in support of his

application. Counsel asserts that the date of entry on the applicant's Form I-687 was an inadvertent error. Furthermore, counsel asserts that the submitted affidavits are credible, amenable to verification and contain direct personal knowledge of the events and circumstances of the applicant's residency.

Counsel asserted that the affidavit of [REDACTED] the President of the [REDACTED] Society, was not given any importance. The affiant confirmed that the applicant resided at the Sikh temple from 1981 until 1984. The affiant did not state the address where the applicant resided during the membership period, include the seal of the organization impressed on the letter or the letterhead of the organization, establish how the author knows the applicant, or establish the origin of the information being attested to, as required under 8 C.F.R. § 245a.2(d)(3)(v).

Upon review of the instant application, the AAO finds that multiple inconsistencies exist in the record. 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).

The applicant's Form G-639 indicates that the applicant entered the United States in August 1990. Counsel asserts that it is an inadvertent error, but does not provide any independent objective evidence to explain the alleged error. Counsel cannot overcome the above findings simply by offering a verbal explanation, pursuant to *Matter of Ho, supra*. It is noted that the Form G-639 requests the applicant's date of entry, but not the applicant's first date of entry into the United States. It is more likely that his Form G-639 reflects a subsequent date of entry into the United States. However, if this is the case, then it raises another inconsistency. On his Form I-687, dated March 20, 1992, the applicant only indicated one absence in September 1988 to Canada to meet a friend. There is no evidence in the record to explain these inconsistencies or point to where the truth lies.

The record reflects that the applicant completed a Form I-589, Request for Asylum in the United States, dated October 10, 1990. In his Form I-589, the applicant stated that he departed his country of nationality on September 26, 1990. There is no evidence in the record to explain this contradiction to the applicant's claim of entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988.

The record also reflects that on November 19, 1990, the applicant was convicted of passport fraud and found deportable by the United States Department of Justice, Immigration and Naturalization Services, San Francisco, California. An order of deportation was entered against the applicant for deportation on February 14, 1991.

In regards to the submitted affidavits, the affiants stated that the applicant resided in the United States from 1981 to 2004. The record reflects that the applicant completed a Form G-325, Biographic Information, dated October 10, 1990. In his Form G-325, the applicant stated that he resided in India from October 1985 to September 1990. The applicant has contradicted the

statements of his affiants. Furthermore, in a Record of Sworn Statement in Affidavit Form, dated September 28, 1990, the applicant stated that the only time he resided in the United States was for 12 days from December 9, 1989, to December 18, 1989, as a tourist.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime an application includes numerous errors and discrepancies, and the applicant fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the applicant's assertions.

The AAO agrees with the director and finds that the applicant has failed to provide relevant, probative, and credible evidence. The instant application contains multiple inconsistencies and contradictory statements by the applicant and affiants. The absence of consistent supporting documentation to corroborate the applicant's claim of entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's inconsistent statements regarding his first date of entry into the United States and the affiants' contradictory statements, it is concluded that he has failed to establish entry into the United States prior to January 1, 1982, as well as continuous residence in an unlawful status in the United States through May 4, 1988.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

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