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

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on L2

FILE: [REDACTED]
MSC 01 334 61192

Office: DALLAS

Date: JAN 25 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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) 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 states that he has submitted “maximum evidence” showing that he has been present in the United States since 1981, and that he has been unsuccessful in getting “very old papers” that would assist in his application. The applicant submits an additional document on appeal. The applicant also stated on his Form I-290B, Notice of Appeal to the Administrative Appeals Unit, that a brief and/or additional evidence would be submitted within 30 days of filing the appeal. As of the date of this decision, however, more than 41 months after the appeal was filed, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

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 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 in an affidavit, which he signed under penalty of perjury on January 20, 1990, that he first entered the United States on May 15, 1980 as a B2 temporary visitor. The applicant submitted no

evidence of this entry. Further, the applicant did not indicate how he violated the terms of his visa that would have placed him in an illegal status. Section 1104(c)(2)(B)(ii) of the LIFE Act states:

(ii) Nonimmigrants - In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, such alien must establish that the period of authorized stay as a nonimmigrant expired before such date through the passage of time or that the alien's unlawful status was known to the Government as of such date.

The word "Government" means the United States Government. An alien who claims his unlawful status was known to the Government as of January 1, 1982, must establish that prior to January 1, 1982, documents existed in one or more government agencies so, when such documentation is taken as a whole, it would warrant a finding that the alien's status in the United States was unlawful. *Matter of P-*, 19 I. & N. Dec. 823 (Comm. 1988). The applicant did not allege and provided no evidence that the Government knew that he violated the terms of his visa.

The applicant also stated on his Form I-687, Application for Status as a Temporary Resident, that he left the United States once during the qualifying period, from February to March 1988, the purpose of which was to attend his father's funeral. On his January 20, 1990 affidavit, the applicant stated that he left the United States on November 11, 1986 and returned on December 22, 1986, pursuant to a B-2 nonimmigrant visitor's visa. The applicant submitted a copy of his Indian passport, issued at the Indian Embassy in Amman, Jordan on June 26, 1984, which contains the following annotations:

- A December 13, 1985 departure from Jordan and a December 14, 1985 arrival in Delhi, India.
- A March 13, 1986 departure from Delhi and a March 13, 1986 arrival in Jordan.
- A December 22, 1986 departure from Jordan.
- A December 10, 1986 B-2 visa issued by the United States Consulate in Amman, Jordan for multiple entries until December 9, 1987. The passport also indicates that the applicant was admitted to the United States on December 22, 1986.
- A February 8, 1987 visitor's visa issued by the Canadian immigration services in San Francisco, which expired on February 23, 1987. The passport contains another Canadian visitor's visa issued in Amman, Jordan that was valid until February 1, 1987. The passport is unclear as to when the latter visa was issued.

These dates are inconsistent with the dates that the applicant claimed to have been present in the United States, and his subsequent departures from the United States. 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. 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. 582, 591 (BIA 1988).

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

1. An undated notarized statement from _____ in which he stated that he has known the applicant since 1981, and that he has met the applicant off and on since then.
2. An August 6, 2001 notarized statement from _____ in which he stated that he met the applicant in December 1981 at the Sikh Temple of North Texas in Dallas.
3. An August 3, 2001 letter from _____ in which he stated that he has known the applicant since 1981, and that they met in Houston, Texas.
4. On appeal, the applicant submitted a December 12, 2002 letter from _____, president of the Sikh Temple of North Texas, in which he stated that the applicant has been living in the Dallas Fort Worth Metroplex area since 1982.

While affidavits in some cases may be able to meet the applicant's burden of proof, other evidence in the record contradicts the statements of the applicant's supporting witnesses. The applicant submitted no contemporaneous documentation that he was present and residing in the United States prior to December 1986. Given the absence of any contemporaneous documentation and the unresolved inconsistencies in the record, it is concluded that the applicant 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.