

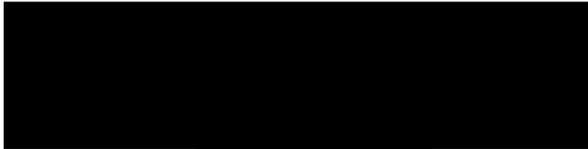
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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FILE: [Redacted]
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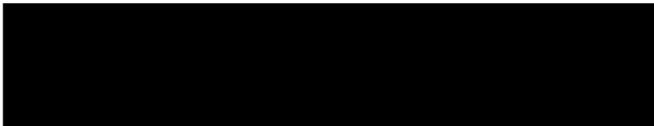
Office: LOS ANGELES

Date:

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. 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, Los Angeles, California, 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, counsel states that the applicant has been living in the United States since 1981, and that “[b]ecause of the lack of time since filing the petition [sic], it is hard to gather documentation 20-years later.” Counsel indicated on the 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 26 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 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).

The applicant stated on his declaration to determine class membership that he first entered the United States in October 1981. On his Form I-687, Application for Status as a Temporary Resident, which he

signed under penalty of perjury, the applicant stated that he was self-employed during the qualifying period. The applicant also stated that he lived at the following addresses:

1981 to April 1982
April 1982 to September 1986
October 1986 to 1988

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 March 4, 2002 affidavit from [REDACTED] in which he stated that the applicant had been "a good family friend since 1975." [REDACTED] stated that, to his personal knowledge, the applicant has lived in California since October 1986.
2. A February 28, 2002 affidavit from [REDACTED], in which he stated that the applicant was a family friend and that to his personal knowledge, the applicant had lived in California since October 1986.

In response a request for evidence dated October 22, 2003, the applicant submitted the following documentation:

3. A notarized statement from [REDACTED], in which he stated that he had known the applicant since October 1981, "when he came to California from India and left to New York." This statement appears to contradict the applicant's statement that he arrived in New York and then went to California. [REDACTED] did not provide any details regarding his initial acquaintance with the applicant or how he dated their initial acquaintance.
4. A January 13, 2004 notarized statement from [REDACTED], in which he stated that he ha known the applicant since 1975, that the applicant called him from New York on Christmas Day in 1981, and that the applicant visited him in April 1983.
5. A December 29, 2003 letter from the president of the Sikh Temple Riverside, Inc., in which he stated that he has known the applicant for a long time, as the applicant always came to the "gurndwara." [sic] The letter does not list any specific dates of the applicant's attendance at the temple.

In response to the director's Notice of Intent to Deny (NOID) issued on October 4, 2004, the applicant stated the he was not in a legal status in January 1981 and therefore has no documentation for that period. The applicant submitted the following additional documentation to establish his presence and residency in the United States during the qualifying period.

6. An affidavit from [REDACTED] in which she stated that the applicant has been a good family friend since 1981. [REDACTED] also stated that, to her personal knowledge, the applicant lived at the addresses and during the time frames that he stated on his Form I-687 application. The affiant did not indicate the circumstances surrounding her initial acquaintance with the applicant or how they met and maintained a friendship while the applicant was in New York.
7. An October 25, 2004 sworn statement from [REDACTED], in which he certified that he met the applicant on October 2, 1981 in an apartment in Long Island, New York.

On appeal, the applicant submits the following documentation:

8. A November 28, 2004 statement from [REDACTED] in which she certifies that she has known the applicant since he arrived in the United States in 1981, and that they have been really close friends. [REDACTED] did not specify the circumstances surrounding her initial acquaintance with the applicant or how they met and maintained a friendship while the applicant was in New York.
9. A November 29, 2004 statement from [REDACTED], in which she affirms that she has known the applicant since October 1981 when he first arrived in the United States. As with [REDACTED] [REDACTED] did not specify the circumstances surrounding her initial acquaintance with the applicant or how they met and maintained a friendship while the applicant was in New York.
10. A November 15, 2004 statement from [REDACTED] in which he stated that he has known the applicant since October 1981 when they met at a Sikh Temple in New York.
11. A November 29, 2004 statement from [REDACTED], in which he stated that he has known the applicant since 1981, and that they used to talk regularly on the phone when the applicant was in New York.

In this instance, the applicant has submitted eleven affidavits or statements attesting to his continuous residence in the U.S. during the period in question. Affidavits in certain cases can effectively meet the preponderance of evidence standard. However, in the present case, the applicant submitted affidavits from only close friends. The applicant submitted no objective documentary evidence in the form of affidavits or third party statements, and the affidavits submitted lack sufficient corroborative or verifiable detail. The affidavits, within the context of all evidence submitted, fail to establish that it is more likely than not that the applicant was present and residing in the United States during the requisite period. The applicant submitted no contemporaneous documentation to establish his eligibility for benefits under the LIFE Act.

Accordingly, the applicant has failed to establish that he resided continuously residence in the U.S. for the required period.

The record reflects that on January 12, 2004, the applicant was convicted of an infraction in the Superior Court of California, County of San Bernardino of petty theft under \$50 in violation of California Penal Code section 490.1. The applicant was fined \$250. Petty larceny is a crime involving moral turpitude. *Matter of Garcia*, 11 I&N Dec. 521 (BIA 1966). However, as the maximum possible penalty for the crime for which the alien was convicted does not exceed imprisonment for one year and the alien was not sentenced to a term of imprisonment in excess of six months, he meets the exception for determining whether an individual has been convicted of a crime involving moral turpitude as provided in Section 212(a)(2)(A)(ii)(II) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(2)(A)(ii)(II).

Nonetheless, the applicant has not established continuous residence in the United States for the required period and his appeal will be dismissed.

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