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MAY 01 2007

FILE: [REDACTED] Office: SEATTLE Date:
MSC 02 109 60029

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.


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, Seattle, Washington, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

(B) *Meaning of affected party.* For purposes of this section and §§ 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

Although the record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, authorizing [REDACTED] to act on behalf of the applicant, [REDACTED] is no longer authorized to represent the applicant pursuant to 8 C.F.R. § 292.1(a).¹ As such, the decision will be furnished only to the applicant

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, the applicant asserts that he has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant argues that the director's decision unfairly and prejudicially failed to fairly evaluate the affidavits submitted. The applicant provides copies of documents that were previously submitted.

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. 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 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

¹ See <http://www.usdoj.gov/eoir/profcond/chart.htm>

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 record reflects that on August 17, 1990, the applicant filed a Form I-687, Application for Status as a Temporary Resident. Along with this application, the applicant submitted an affidavit from [REDACTED] who attested to the applicant's residences in the United States since 1982, and an affidavit from [REDACTED] who attested to the applicant's departure to Canada from July 30, 1987 to September 10, 1987. [REDACTED] indicated that he drove the applicant to and from the Canadian border during this dates "when his [the applicant's] relative in Canada re-couped."

On March 10, 1992, the District Director, San Francisco, California issued a Notice of Intent to Revoke, which was hand delivered and stated, in part:

You stated in an interview this date that you entered the U.S. in 1981 and have not been back to India since that time. You further stated that your wife was in India at the present time and you have no children. However, a telephone call placed to your residence this date reveals that your wife, [REDACTED] is residing in the U.S. with your four year old child. She stated that you were both married 5 ½ years ago in India. You have falsified your documents to the Immigration and Naturalization Service to reflect that your were residing continuously in the U.S. and that you had a brief departure to Canada.

In response, the applicant asserted that he entered the United States in 1981, he was married by Indian custom, and had no children. The applicant claimed, "[o]nly our families know we are married. I did not get married to her officially." The applicant further asserted that his wife departed to Canada in 1987 and he met her in Canada in May 1987.

The applicant, however, has not provided any credible evidence, such as a declaration in lieu of a marriage certificate that supports his assertion. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

On June 10, 1997, the district director issued another Notice of Intent to Revoke, which was based on a legacy Immigration and Naturalization Service investigation called [REDACTED]. The notice advised the applicant that he had been identified as procuring his Form I-688A through the payment of a bribe to the Salinas Chief Legalization Officer, who was working undercover in [REDACTED]. The applicant was further advised that Federal Bureau of Investigations had identified 22 brokers who paid bribes to the Chief Legalization Officer on behalf of 1,370 applicants and that the brokers had been prosecuted and convicted. The applicant was informed that his application, with bribe payment, was earmarked and segregated and he was issued an Form I-688A, employment authorization card in conjunction with the filing of his Form I-687 application. However, the issuance of the employment card was not indicative of the CSS class membership.

The applicant was given 18 days to submit a rebuttal. The applicant, however, failed to respond to the notice.

At the time of his LIFE interview on June 20, 2002, the applicant was issued a Form I-72, requesting that he submit evidence other than affidavits to establish his presence in the United from November 6, 1986 through May 4, 1988. The applicant, however, failed to respond to the notice.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence with his LIFE application:

- A photocopied prescription dated December 31, 1985 issued by [REDACTED] a medical doctor at Valley Hospital Medical Center in Van Nuys, California.
- An envelope with an indecipherable postmark.
- A letter dated July 1, 2002 from [REDACTED] reservation manager at [REDACTED] in San Francisco, California, who indicated that the applicant stayed at the hotel for four nights from October 23, 1987 to October 27, 1987.
- An undated and unsigned statement from the [REDACTED] in Calcutta, India, which indicated that the applicant is the holder of a savings account, and on November 10, 1987, \$1000.00 was deposited in the account that was sent by the applicant in the United States.
- Notarized affidavits from [REDACTED] and [REDACTED] of Santa Rosa, California and [REDACTED] of Petaluma, California, who all attested to the applicant's residence in the United States since 1982. The affiants based their knowledge on having attended the same weddings, parties, temples, and other cultural functions. The affiants also attested to the applicant's residences at [REDACTED] and in Oakland and San Leandro, California during the requisite period.
- An affidavit notarized September 5, 2001 from [REDACTED] of Kent, Washington, who attested to the applicant's residence in the United States since 1982. The affiant based his knowledge on having attended the same weddings, parties, temples and other cultural functions. The affiant also attested to the applicant's residences since 1982 at [REDACTED]

On June 21, 2003, the District Director, Seattle, Washington, issued a Notice of Intent to Deny, which advised the applicant of his failure to respond to the Form I-72 issued on September 17, 2002. The applicant, in response, claimed that he visited the legalization officer on July 22, 2002 and "I have seen the officer concerned. He has seen my documents and said its o.k., We will send you a letter within a month or so." The applicant submitted copies of previously submitted documents along with:

- An additional affidavit notarized July 11, 2003 from [REDACTED] who indicated that he first met the applicant in the United States at a Sikh Temple in Fremont in 1985, and have remained good friends with the applicant since that time.
- An affidavit notarized July 10, 2003 from [REDACTED] of Santa Rosa, California, who indicated that she had known the applicant since 1986 at a social function in Oakland, California. The affiant asserted that she has remained in contact with the applicant since that time.

- An affidavit notarized July 11, 2003 from individual with an indecipherable name, who indicated that [s]he has known the applicant for over 20 years. During this time-period, the affiant and the applicant visited their respective residence.
- An affidavit notarized July 11, 2003 from [REDACTED] of Ukiah, California, who indicated that she met the applicant at a party in 1986. The affiant asserted that she has remained in contact with the applicant since that time. The affiant asserted that she was residing in Santa Ana, California in 1986.
- Several photographs the applicant claimed were taken in 1988 in the United States.

The director, in denying the application, noted the following:

1. The applicant's trip to Canada in May 1987 was not documented on his Form I-687 application;
2. the applicant did not claim any residence in Van Nuys, California in regards to the photocopied prescription, which listed the medical center facility in Van Nuys;
3. the envelope submitted was either illegible or covered up and, therefore, had little probative value;
4. the applicant failed to provide evidence that he had a bank account in the United States in regards to the statement from Allahabad Bank in Calcutta, India;
5. no explanation was provided why it was necessary for the applicant to spend four nights in a San Francisco hotel when the applicant resided in nearby Oakland;
6. none of the documentation presented with his application outlined the manner of his first entry into the United States;
7. the applicant's claim that his only absence from the United States was July 30, 1987 to September 10, 1987, directly contradicted his statement of March 10, 1992, in which the applicant asserted he went to Canada in May 1987;
8. the affiants did not provide any evidence to establish their presence in the United States during the time-period they attested to the applicant's residence;
9. the affidavits from [REDACTED] contradicted each other in that, the affiant indicated in his first affidavit to have met the applicant in the United States at a family gathering in 1984, but in his subsequent affidavit, the affiant asserted that he first met the applicant in the United States at a Sikh Temple in 1985;
10. none of the affiants stated to have known the applicant in the United States prior to January 1, 1982;
11. the photographs provided had no identifying evidence that could be extracted which would serve to either prove or imply that photograph was taken during the requisite period; and
12. the lack of employment verification was consistent with the type of documentation (or lack of documentation) characteristic of the application investigated as part of Operation Catchhold.

The director concluded that the applicant had not submitted any credible, verifiable evidence to establish his continuous presence and residence in the United States during the requisite period.

On appeal, the applicant asserts that the medical receipt is direct evidence that places him in California at the stated time. The applicant states, "on its face, the hospital record – if not contradicted – provided probative value and the Service is required to recognized the significance of such evidence." Regarding the statement from the Allahabad Bank in Calcutta, India, the applicant asserts that he has never stated that had a bank account; only that he sent a check to his parents. The applicant states that the affidavits submitted with his Form I-687 application "are all executed on the same form as is standard practice in Legalization cases by the government and immigration assistants and counsel." The applicant states that *Matter of E-M-*, holds that in a legalization

proceeding, affidavit evidence that is consistent and credible is sufficient to satisfy the burden under 8 C.F.R. § 245a.2.

While 8 C.F.R. § 245a.2(d)(3) sets forth specific criteria which affidavits of residence from employers and organizations should meet to be given substantial evidentiary weight, we look to *Matter of E-- M--*, *supra*, for guidance in determining the appropriate criteria for affidavits from other third party individuals.

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, *supra*. In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The affidavits submitted, however, have little probative value or evidentiary weight as none of the affiants attested to have known the applicant in the United States prior to January 1, 1982. In addition, the applicant's failure to address the adverse evidence outlined in Notice of Intent to Revoke dated June 10, 1997, and his failure to disclose his May 1987 departure to Canada on his Form I-687 application renders the affidavits questionable at best.

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” *Black's Law Dictionary* 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Based on the evidence in this case, the AAO determines that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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