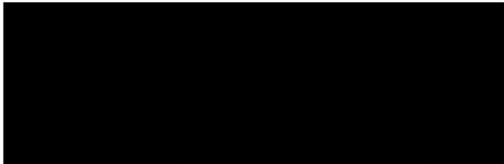


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



L2

FILE: [Redacted]
MSC 02 247 67152

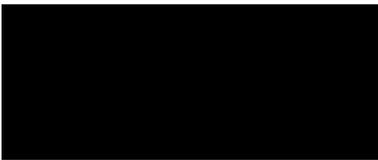
Office: SPOKANE Date:

OCT 01 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. 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 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, counsel asserts the director focused only on the Non-Immigrant Information System printout which reflected the applicant's entry in August 1984 and his departure in September 1984, but made no credibility findings on the four declarations that were submitted. Counsel asserts the director took no action to verify the proffered action. Counsel provides contact information for two of the affiants.

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 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).

Here, the submitted evidence is not relevant, probative, and credible. In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence:

- A notarized affidavit from [REDACTED] of Antioch, Tennessee, who indicated he has known the applicant since early 1982. The affiant asserted he interviewed the applicant for a job placement at his motel, but was unable to employ the applicant due to the language barrier.
- A notarized affidavit from [REDACTED] of Rutherford, New Jersey, who indicated she first met the applicant in 1981 at the Hindu community temple at Garfield. The affiant asserted she had personally recruited the applicant for many religious occasions and the applicant had visited her home.
- A notarized affidavit from a brother-in-law, [REDACTED] of Linden, New Jersey, who indicated he has known the applicant "since approximately 1981 early 1982" and met the applicant at the temple in Garfield. The affiant asserted a month or two later, the applicant became his room-mate and they resided together "at this address til April 1984 and than moved to Broomfield." The affiant asserted, in part, "[n]ow during this time I got married so they moved to Linden NJ on price St. and offan [sic] had visited me they stayed there till 1988 till 1990 and moved to Portland in 1990...." The affiant attested to the applicant's employment at an "Oriental grocery store in Brooklyn NY" at Linden Stationery in Linden, New Jersey and at a deli.
- A notarized affidavit from [REDACTED] of Linden, New Jersey, who indicated he has known the applicant since 1988. The affiant asserted that the applicant had applied to rent an apartment at [REDACTED] he affiant asserted, "and for rental purpose and references, I have checked that they were staying at [REDACTED] time since 1984 and during that time they were working in Lincoln Park, NJ and at some deli in Clark part time."

The director issued a Notice of Intent to Deny dated August 18, 2005, which advised the applicant that the submitted evidence did not establish his continuous unlawful residence in the United States since before January 1, 1982 through May 4, 1988. In addition, the applicant was informed that there were inconsistencies between his application and documentation. Specifically, the applicant claimed only one absence from the United States during the requisite period; June 4, 1987 to June 18, 1987 to Canada. However, Citizenship and Immigrations Services Non-Immigrant Information System Archive records reflected the applicant had entered the United State as a B-2 visitor on August 4, 1984 and departed on September 5, 1984. The director determined that the applicant has provided false statements and therefore was inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

The applicant, in response, asserted, that he first entered the United States in November 1981, resided in Bloomfield, New Jersey until August 1987, "where I worked at various construction jobs and lived with friends." The applicant asserted, in part:

In July 1984, I returned to India to help my father with some family business matters. When our business had concluded, I planned to return to the U.S. I hired a travel agent to prepare an application for me to obtain a visitor visa to the U.S. The agent prepared the application, but did not include the information that I had been living in the U.S. since 1981, as he said I would not have been issued a visa. The agent took my application, my Indian passport, financial documents and proof of the property I owned in India to the U.S. consulate in Mumbai and I was issued a visitor visa.

The applicant asserted that upon his re-entry in late summer of 1984, he did not inform the custom officer of his residence in the United States since 1981 or that he had intended to remain long term. The applicant asserted, in part:

I then departed the US to India, as I had purchased a round-trip ticket. I remained in India briefly to see family and then flew to Canada. From Canada I re-entered the U.S. without inspection in Buffalo, New York, by automobile sometime in the first week of October 1984.

I applied for temporary resident status under the amnesty program in 1989 through a Qualified Designated Entity called "Join America" in New York City, New York. I gave the information about my trip to India in 1984, and also my trip to Canada in 1987, to the person who helped me complete the application. I do not know why he did not include all this information on the Form I-687. I signed the form that he completed, since I thought he knew what information was needed by the INS to decide my application.

The director, in denying the application, considered the applicant's statement, but concluded that no documentation had been submitted to corroborate his statement.

On appeal, counsel asserts that the director failed to consider and accord proper weight to the affidavits submitted by the applicant. Counsel submits a statement from the applicant's father, [REDACTED] of Pasco, Washington, who attested to the applicant's residence in the United States since 1981, his one month visit to India in the summer of 1984 and his visit for several weeks in "September 1984." The affiant indicated that he immigrated to the United States in 1991.

The statements of counsel and the applicant have been considered. The AAO, however, does not view the affidavits from the affiants as substantive enough to support a finding that the applicant entered and began residing in the United States before January 1, 1982 to May 1986 as the applicant has presented contradictory and inconsistent documents, which undermines his credibility. Specifically:

1. [REDACTED] attested to the applicant's residence in the United States since 1981, but failed to provide the applicant's address during the period in question.
2. Likewise, [REDACTED] provided no address where he and the applicant were purportedly residing through April 1984. The affiant indicated subsequent to April 1984, he and the applicant resided at [REDACTED]. However, on his Form I-687 application, the applicant claimed residence at [REDACTED] since his initial entry of November 1981 to August 1987. The affiant also indicated once he was married, the applicant moved to [REDACTED]. However, the applicant, on his Form I-687 application, did not claim residence at this location. Furthermore, the affiant indicated the applicant was employed at an oriental grocery store, Linden stationery and at a deli. However, in his statement and on his Form I-687 application, the applicant claimed only to have been employed in construction. The affidavit from the applicant's brother-in-law must be viewed as having a self-evident interest in the outcome of proceedings, rather than as an independent, objective and disinterested third party.
3. Because [REDACTED] claimed to have met the applicant in 1988, he cannot attest to the applicant's alleged residence or employment prior to 1988. It is noted that the affiant is [REDACTED] brother and, therefore, he also must be viewed as having a self-evident interest in the outcome of proceedings, rather than as an independent, objective and disinterested third party.

4. Likewise, [REDACTED] cannot attest to the applicant's entry prior to 1981 as he claimed to have met the applicant in 1982. Further, the affiant provides no details regarding the nature of his relationship with the applicant subsequent to the job interview or the basis for his continuing awareness of the applicant's residence.
5. [REDACTED] can only attest to the applicant's visits to India, but not to his residence in the United States during the period in question as the affiant did not immigrate to the United States until 1991.
6. The applicant, throughout the application process, has not provided any employment documentation to corroborate his claim of employment listed on his Form I-687 application.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

Given the credibility issues arising from the documentation provided by the applicant, it is determined 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). Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

Finally, beyond the decision of the director, it must be noted that on his Form I-687 application, the applicant failed to disclose he had a child born on April 2, 1986 in India. The applicant's significant omission of this fact, is a strong indication that the applicant was either not in the United States during this period or may have been outside the United States beyond the period of time allowed by regulation. As the appeal will be dismissed on the grounds discussed above, this issue need not be examined further.

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

[REDACTED] LIFE:09/17/07:AAOSFH