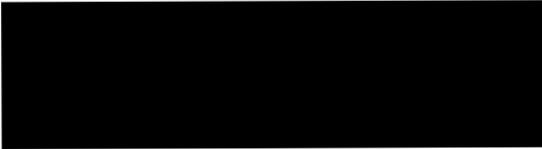


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FILE: [REDACTED]
MSC 02 138 61999

Office: Denver

Date: APR 28 2008

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits [or Records] Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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, Denver, Colorado, 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 failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988.

On appeal, counsel contends that the applicant has submitted sufficient evidence to support her claim of continuous residence in the United States from prior to January 1, 1982 through May 4, 1988 to Citizenship and Immigration Services or CIS (formerly the Immigration and Naturalization Service or the Service). Counsel includes copies of previously submitted documentation in support of the appeal.

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 and 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act), on or about April 21, 1992. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry, the applicant listed [REDACTED] in Fresno, California from November 1981 through November 1991. At part #35 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc., the applicant failed to list any affiliations or association with any group.

In support of her claim of continuous residence in the United States since prior to January 1, 1982, the applicant submitted four affidavits all signed by [REDACTED] two of which are dated March 16, 1992 with the remaining two affidavits dated March 31, 1992. In the two affidavits dated March 16, 1992, [REDACTED] stated that he had personally known the applicant, her son, and her daughter in that period from November 5, 1981 to November 5, 1991 and that he employed the applicant as a seasonal laborer for cash on his farm from January 1983 to January 28, 1988. In the two affidavits dated March 31, 1992, [REDACTED] declared that he provided the applicant with room and board in his home at [REDACTED] in Fresno, California from November 5, 1981 to November 5, 1991 and that he employed the applicant as a seasonal laborer for cash on his farm.

The applicant provided two affidavits that are signed by [REDACTED] and dated April 10, 1992 and April 15, 1992, respectively. In both affidavits, [REDACTED] asserted that the applicant was his niece and she had visited and stayed with him in Canada from July 4, 1987 to July 30, 1987 before returning to the United States. However, [REDACTED] failed to provide any specific

and verifiable testimony to corroborate the applicant's claim of residence in this country for the requisite period.

The record shows that the applicant appeared for an interview relating to her Form I-687 application at the Service's Legalization Office in Seattle, Washington on August 2, 1993. The notes of the interviewing officer reveal that the applicant testified under oath that she lived at [REDACTED] in Selma, California from 1984 to 1991. The applicant's testimony that she resided at this address in Selma, California directly contradicted her previous testimony that she lived at [REDACTED] in Fresno, California from November 1981 through November 1991 at part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry.

Subsequently on May 28, 1996, the applicant submitted a declaration in which she claimed that she had misinterpreted a question during her interview on August 2, 1993 and mistakenly believed that the interviewing officer has asked her the address of [REDACTED], the individual who had provided her with housing and employment during the requisite period. The applicant contended that [REDACTED] had purchased the property on [REDACTED] in Selma, California while he still owned his original home and property on [REDACTED] in Fresno, California. The applicant asserted her lack of proficiency in English caused her to indicate that this was her address rather than an additional property owned by [REDACTED]. Regardless, the applicant failed to provide any evidence to demonstrate that [REDACTED] owned property located on either [REDACTED] in Selma, California or [REDACTED] in Fresno, California.

On February 15, 2002, the applicant filed her Form I-485 LIFE Act application. At part #3C of the Form I-485 LIFE Act application where applicants were asked to list their memberships in or affiliations with every political organization, association, fund, foundation, party, club, society, or similar group, the applicant listed "none." The applicant provided copies of previously submitted documents in support of her claim of residence but failed to include any new evidence with her Form I-485 LIFE Act application.

Subsequent to the filing of her Form I-485 LIFE Act application, the applicant submitted an original receipt from the Sikh Temple of the Pacific Coast in Caruthers, California dated December 2, 1982 that reflected she made a \$20.00 contribution to this religious institution on this date. The applicant also included a letter containing the letterhead of the Sikh Temple of the Pacific Coast in Selma, California that is dated January 15, 2003 and signed by [REDACTED]. [REDACTED] stated that he had been president of this Sikh Temple from May 1986 to 1990 and he was currently serving as this religious institution's vice-president. Mr. [REDACTED] noted that he had known the applicant since November 1981 as they had "been meeting each other at various Fresno/Selma Community churches and other community gatherings." Nevertheless, [REDACTED] failed to provide the applicant's address of residence during the period she was associated with the Sikh Temple of the Pacific Coast as required by 8 C.F.R. § 245a.2(d)(3)(v). Moreover, it must be noted that the applicant failed to list association or affiliation with the Sikh Temple of the Pacific Coast at part #34 of the Form I-687 application and listed "NONE" at part #3C of the Form I-485

LIFE Act application when asked to list her memberships, associations, and affiliations. No explanation was put forth as to why the applicant failed to list her association with the Sikh Temple of the Pacific Coast if in fact she attended this religious institution since November 1981.

A review of the record revealed that the applicant possessed a separate Administrative file or A-file, [REDACTED] containing a Form I-589, Request for Asylum, which the applicant's husband submitted to the Service on July 22, 1994. The Form I-589 asylum application listed the applicant's husband as the principle beneficiary and the applicant, her son, and her daughter as derivative beneficiaries. The record reflects that the Form I-589 asylum application of the applicant's husband and supporting documents have been consolidated into the current record of proceedings. At part #33 of Form I-589 asylum application where applicants are asked to provide any additional statement relevant to their case, the applicant's husband testified that the applicant traveled from India to Canada in October of 1981 and subsequently made her way to the United States where she lived with relatives in California but their children did not travel to this country until May 1991. On the Form G-325A, Record of Biographic Information, which accompanied the Form I-589 asylum application of the applicant's husband, the applicant indicated that she resided at [REDACTED] in Selma, California from November 1984 to November 1991. As discussed previously, the applicant's testimony that she resided at this address in Selma, California directly contradicted her previous testimony that she lived at [REDACTED]

in Fresno, California from November 1981 through November 1991 at part #33 of the Form I-687 application. Further, the fact that the applicant testified that she lived at the [REDACTED] address in Selma, California on two separate and distinct occasions, at her interview on August 2, 1993 and on the Form G-325A biographic report included with her husband's asylum application filed on July 22, 1994, negated the explanation relating to this discrepancy she provided in the declaration submitted on May 28, 1996.

On May 23, 2003, the district director issued a notice of intent to deny to the applicant informing her of CIS's intent to deny her application because she failed to submit sufficient credible evidence of continuous unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988. Specifically, the district director noted that [REDACTED]'s testimony that he had personally known the applicant, her son, and her daughter in that period from November 5, 1981 to November 5, 1991 was suspect because the applicant's husband had testified that their children did not come to the United States until May 1991. In addition, the district director cited the contradictory and conflicting testimony the applicant herself had provided regarding her address of residence in this country during the requisite period. The applicant was granted thirty days to respond to the notice.

In response, the applicant submitted a statement in which she reiterated her claim that [REDACTED] owned both of the properties located at [REDACTED] in Selma, California and [REDACTED] in Fresno, California, respectively. The applicant revised her prior testimony by declaring that she had lived at both of these properties depending upon [REDACTED]'s determination as to where help was needed. The applicant asserted that reason why the [REDACTED] address in Selma, California was listed as her address of residence on the

Form G-325A biographic report included with her husband's Form I-589 asylum application was the result of her husband having mailed letters to her at this address. Nevertheless, the applicant failed to provide any evidence to support her claims regarding [REDACTED]'s alleged ownership of the properties at either [REDACTED] in Selma, California or [REDACTED] in Fresno, California or her assertion that her husband mailed letters to her at the [REDACTED] address in Selma, California. 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)).

The district director determined that the applicant failed to submit sufficient credible evidence demonstrating her residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988, and, therefore, denied the Form I-485 LIFE Act application on July 18, 2003.

On appeal, counsel contends that the applicant has submitted sufficient evidence to support her claim of continuous residence in the United States from prior to January 1, 1982 through May 4, 1988 to CIS. While counsel contends that the district director mistakenly identified and failed to acknowledge documents submitted in support of the applicant's claim of residence, any such action must be considered as harmless error because the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.12(e). The affidavits submitted in support of the applicant's claim of residence in the United States for the requisite period lack specific detail and verifiable information to substantiate the applicant's claim of residence in the United States for the requisite period. Documents from the Sikh Temple of the Pacific Coast are of questionable probative value because the applicant did not claim membership in or association or affiliation with this religious institution on either the Form I-687 application or the Form I-485 LIFE Act application. More importantly, the applicant damaged her own credibility and the credibility of her claim of residence in this country by providing conflicting and contradictory testimony relating to her addresses of residence in the United States during the requisite period.

Doubt cast on any aspect of the evidence 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. *See Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The absence of sufficiently detailed supporting documentation and the contradictory testimony provided by the applicant herself seriously undermines the credibility of the supporting documents, as well as the credibility of the applicant's claim of residence in this country for the period in question. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation

to meet her burden of proof in establishing that she has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon supporting documents with minimal probative value and her own conflicting testimony, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, 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.