

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

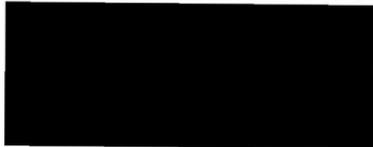
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2



FILE:



Office: LOS ANGELES

Date:

AUG 01 2008

MSC 02 236 62678

IN RE:

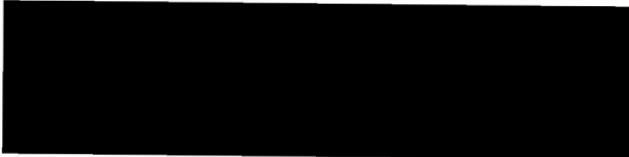
Applicant:



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 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, Los Angeles, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel asserts that the director erred in failing to give adequate weight to all of the evidence, and states the applicant has submitted sufficient evidence to establish eligibility. Counsel submits a brief and additional evidence, on appeal.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

In the Notice of Intent to Deny (NOID), dated October 26, 2006, the director requested that the applicant submit evidence establishing that he had entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988. The director noted that the applicant submitted documentation that was internally inconsistent, specifically, affidavits containing conflicting employment and residence information.

In the Notice of Decision, dated November 30, 2006, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant responded to the NOID but failed to overcome the reasons for denial.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. The applicant submitted letters of employment, reference letters, and additional documents, such as a rental agreement, and postage envelopes, as evidence to support his Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

The applicant submitted the following letters of employment:

- 1) A letter of employment from [REDACTED] dated August 12, 1990, stating that he had employed the applicant in various fields picking seasonal fruits from March 1986;
- 2) Two letters of employment from [REDACTED] dated September 30, 1990, stating that he had employed the applicant doing seasonal agricultural work from January 1982 until February 1983, and from March 1983 until February 1986.

It is noted however, that the letters of employment failed to provide the applicant's address at the time of employment, show periods of layoff, declare whether the information was taken from company records, and identify the location of such company records and state whether such

records are accessible or in the alternative state the reason why such records are unavailable as required under 8 C.F.R. § 245a.2(d)(3)(i).

In addition, the applicant submitted:

1. A sworn declaration from the applicant whereby the applicant attempts to address discrepancies raised by the director in the NOID;
2. Five mail envelopes addressed to the applicant in the United States with India postage stamps. Two of the envelopes bear postmarks in 1984, and 1985, respectively. The postmarks on the remaining envelopes are unclear;
3. A receipt for \$250.00 from Sikh Temple Los Angeles, dated May 27, 1984;
4. A letter from [REDACTED] stating that she has known the applicant in the United States since 1981, and a letter from [REDACTED] stating that he has known the applicant in the United States since 1985. However, the letters are not notarized, and therefore, they lack probative value.
5. A rental agreement, dated September 1, 1987.

The applicant has submitted three letters of employment, his sworn declaration, mail envelopes, and a rental agreement. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

It is noted that the record reflects that both the applicant's Form I-687, signed October 8, 1990, and his Biographic Data, Form G-325A, which accompanied his Application for Adjustment of Status, Form I-485, contradicts the letters and affidavits and letter of employment provided. The applicant claims that he entered the United States in 1981, and he indicated on his Form I-687 that he departed the United States once, from June 20, 1987 to July 15, 1987, to visit relatives in Canada. However, on his Biographic Data, Form G-325A, the applicant indicates that he was married in India on April 13, 1987, and that he resided in India from November 1960 until September 1987.

Contrary to counsel's assertion, the above unresolved discrepancies cast considerable doubt on whether the applicant resided in the United States from prior to January 1, 1982 as he claims. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is 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.