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FILE: [REDACTED]
MSC 02 043 64401

Office: SAN FRANCISCO

Date: **AUG 29 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.


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, San Francisco, 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 failed to demonstrate that he resided in the United States in a continuous, unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel asserts that the submitted evidence is consistent with the applicant's claim of entry into the United States prior to January 1, 1982, and continuous, unlawful residence in the United States since such date through May 4, 1988. Counsel submits additional evidence in support of the applicant's claim.

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 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 through May 4, 1988. *See* § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant 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 section 1104 of the LIFE Act. 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.* at 80. 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 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 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, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet the burden of establishing, by a preponderance of the evidence, that the applicant’s claim of continuous unlawful residence in the United States during the requisite period is probably true. Upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

The applicant has provided several affidavits relating to the requisite period. The record contains an affidavit, dated July 21, 2006, from [REDACTED]. The affiant stated that she has been living in the United States since 1979, and has executed two separate affidavits dated August 28, 2001, and October 2, 2001, which are contained in the record, on behalf of the applicant. She stated that she met the applicant in July 1981 while visiting the Sikh Temple in Stockton, California. She described how she met the applicant and that he stated he arrived in the United States two months prior. She also stated that she has seen the applicant “on and off” from July 1981 to date. However, no personal details are provided of the claimed relationship of over twenty-five years. In addition, the affiant failed to state the applicant’s place of residence during the statutory period. While the affiant described how she met the applicant, the affidavit is significantly lacking in relevant detail regarding the applicant’s residence in the United States during the requisite period. Thus, it lacks probative value and has only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

The record includes two affidavits, both dated June 13, 2002, from [REDACTED] who stated that they were present when the applicant left for the United States in May 1981 from Delhi Airport. The affiants stated that they met the applicant in July 1987 when he returned to visit India and were present when the applicant left for the United States in September 1987. The record also includes an affidavit from [REDACTED] the applicant’s brother, dated June 12, 2002. The affiant stated that he was present when the applicant left for the United States in May 1981. He also stated that the applicant returned to India in July 1987, stayed at home, and returned to the United States in September 1987.

While the affiants have stated that the applicant left the Delhi Airport in May 1981, the affiants have no first-hand knowledge that the applicant entered the United States, that he continuously resided in the United States during the statutory period, or that he returned to the United States after his visit to India in September 1987. In addition, the affidavits from [REDACTED] are not amenable to verification. Given this, the affidavits can be given only minimal weight as evidence of the applicant's residence in the United States during the statutory period.

The record also contains two affidavits of employment, dated September 21, 2001, from [REDACTED] owner and managing director of [REDACTED] Brother's Farm. The affiant stated that the applicant has worked for the company in April and May of every year from 1984 through 1987. The applicant was paid in cash. The applicant worked as a farm laborer. His duties included harvesting, planting, and hoeing onions and sweet potatoes, and he was provided with accommodations at the farm. The record also contains documentation regarding the company's bankruptcy, which was filed on October 11, 1985. By regulation, letters from employers must include whether the information was taken from official company records and where the records are located and whether CIS may have access to the records; if records are unavailable, an affidavit explaining this shall also state the employer's willingness to come forward and give testimony if requested. 8 C.F.R. § 245a.2(d)(3)(i). While the affidavits lack some relevant details, the affidavits can be given minimal weight as evidence of the applicant's residence in the United States for two months of every year from 1984 to 1987.

In support of his application, the applicant listed his place of residence in the United States during the requisite period. He indicated that he resided at [REDACTED] Van Nuys, California, from May 1981 to March 1990, with the exception of his visit to India from July 1987 to September 1987. In his own declaration, dated October 3, 2001, the applicant stated that he is not able to provide proof of his residence at the above address because the friend he resided with "is not available now". To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.13(f). The record does not include any evidence of the applicant's claimed place of residence in the United States during the statutory period, with the exception of his employment at Pablo Brother's Farm.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to lack credibility or to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. Although there is some evidence of the applicant's presence in the United States in April and May of 1984 through 1987, the evidence is bereft of sufficient details to support the applicant's claim of continuous residence for the duration of the requisite period.

In addition, the record contains a copy of the applicant's Republic of India passport, issued in San Francisco on April 30, 1991. On page 5 of the passport, it is noted that the applicant previously traveled on another passport, dated September 4, 1984, issued in New Delhi. The notation indicated that this passport was reported lost. This evidence tends to demonstrate that the applicant was issued a passport in New Delhi on September 4, 1984; therefore, detracting

from the credibility of his claim because the applicant claimed his only absence from the United States was in July 1987. On appeal, counsel asserts that the applicant's 1984 passport was obtained by his parents on his behalf. However, counsel has failed to submit any evidence to substantiate his claim. Without documentary evidence to support his claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Furthermore, the applicant stated that he was absent from the United States from July 1987 through September 1987. On appeal, counsel stated that the applicant had a "two month absence in 1987." A two month absence, a period of 60 days, interrupts his continuous unlawful residence during the requisite period. This single absence is in excess of forty-five (45) days between January 1, 1982, and May 4, 1988, as permitted under 8 C.F.R. § 245a.15(c)(1). While not dealt with in the director's decision, there must, nevertheless, be a further determination as to whether the applicant's prolonged absence from the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means "coming unexpectedly into being." The applicant has not submitted any evidence to establish that an emergent reason delayed his return to the United States.

The AAO finds that, upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the applicant has not shown by a preponderance of the evidence that he continuously resided in the United States for the requisite period.

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. Given the lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) 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.