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[REDACTED]

FILE:

[REDACTED]

Office: SACRAMENTO, CALIFORNIA

Date FEB 27 2008

MSC 01 350 61259

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:

[REDACTED]

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 the matter 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 late legalization provisions of the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Sacramento, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not established that she 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. The director also indicated that the applicant failed to provide sufficient, credible evidence that she was continuously present in the United States during the statutory period beginning on November 6, 1986 and ending on May 4, 1988.

On appeal, counsel asserted that the applicant did maintain continuous unlawful residence and physical presence in the United States during the statutory periods.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must establish his or her continuous, unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act states in relevant part:

(i) In General – The alien must establish that he or she entered the United States before January 1, 1982, and 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.

See also 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 states 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.

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 AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO’s *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.¹

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

The record indicates that on or near July 22, 1990, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On September 15, 2001, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The record contains the following documents that relate to the applicant’s claim that she resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988:

1. The applicant’s sworn statement dated February 6, 2004 taken by a Citizenship and Immigration Services (CIS) officer at [REDACTED] Sacramento, California. Within this statement, the applicant testified that she, her husband and her two children first entered the United States during March 1981. It was explained to her that her husband had testified before the same CIS officer that he first entered the United States with the applicant and her sons at some point after 1983. The CIS officer gave the applicant an opportunity to explain this discrepancy in the two accounts. She explained that she did not know about her husband, but she entered the United States when her son [REDACTED], born on February 19, 1981, was one and one-half months old. The applicant was asked to explain how she entered the United States. She replied that she did not know.
2. The statement of [REDACTED] dated July 3, 2003 on what appears to be letterhead stationary in which [REDACTED] indicated that he is the President of the Sikh Temples Organization of Los Angeles. He also indicated that the applicant attended services at Sikh temples in greater Los Angeles which were under his management on at least a weekly basis from 1981 through 1993. Two telephone numbers for the Sikh Temples Organization are

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

listed within the letterhead of this document. [REDACTED] also specifically included one of the telephone numbers in the letterhead in the body of his statement and stated that that telephone number should be used to contact him.

3. The statement of [REDACTED] LuminentOIC, Inc., Payroll and Compensation Manager, dated April 19, 2005 on LuminentOIC letterhead stationary. In this statement, [REDACTED] indicated that [REDACTED] one of the telephone numbers listed in what appeared to be the Sikh Temples Organization of Los Angeles letterhead stationary used by [REDACTED] Singh in his July 3, 2003 statement, had been the telephone number for LuminentOIC since December 1999.
4. The director's finding in the Notice of Decision dated July 27, 2005 that [REDACTED], the alternate telephone number listed in the Sikh Temples Organization letterhead and the number which [REDACTED] specifically advised the director to use to contact him, is a cellular number that belongs to a private individual who is not connected with the Sikh Temples Organization.
5. The statement of [REDACTED] dated August 21, 2005 in which [REDACTED] explained that [REDACTED] had used outdated letterhead when preparing his statement dated July 3, 2003 and that is why the telephone numbers on the statement of [REDACTED] Singh are not in fact telephone numbers currently used by the Sikh Temples Organization of Los Angeles.
6. A copy of an immunization record for the applicant's son Amardeep born 2/19/81 on to which [REDACTED] transcribed a record of [REDACTED]'s past immunizations on January 8, 1990. The heading of this document states: "This record must be completed by school and child care center personnel from an immunization record provided by parent or guardian." [REDACTED] certified that she reviewed the immunization record presented on behalf of [REDACTED] and transcribed it accurately on to this form, [REDACTED]'s permanent student record (California), on January 8, 1990. The copy of the immunization record indicates that after the initial transferring of [REDACTED]'s previous immunization record on to this record, [REDACTED] received a polio booster vaccination on February 9, 1990.
7. The statement of [REDACTED] which is not dated and which indicates that the applicant was employed at [REDACTED] from April 1981 through August 1984.
8. An additional statement written by [REDACTED] which is not dated and which indicates that the applicant resided continuously in the United States from April 1981 through the unspecified date that this document was signed, and that [REDACTED] employed the applicant from April 1981 through September 1984 as a store clerk.
9. A third statement written by [REDACTED] which is not dated and which indicates that the applicant was employed at Ike 'n' Sam Liquor in Altadena, California from October 1984 through the unspecified date that this document was signed.

10. A copy of the transcript of the deposition of the applicant dated January 15, 2002. The deposition was given as part of the processing of the case *Catholic Social Services v. Ashcroft*. At page 27, line 18 and following of this transcript, the applicant testified that she did not work at all between 1984 and 1989.
11. The first copy of the applicant's Form I-687 submitted into the record that indicates at item #16 that the applicant first entered the United States during 2/81 or February 1981.
12. The first copy of the applicant's Form for Determination of Class Membership in *CSS v. Meese* submitted into the record which states at Item #6 that the applicant first entered the United States during 2/81 or February 1981.
13. The second copy of the applicant's Form I-687 submitted into the record which is identical to the first Form I-687 submitted except that this copy has been modified at item #16 to indicate that the applicant first entered the United States during 3/81 or March 1981.
14. The second copy of the applicant's Form for Determination of Class Membership in *CSS v. Meese* submitted into the record which states at Item #6 that the applicant first entered the United States during 3/81 or March 1981.
15. The statement of [REDACTED] dated January 14, 1990 which indicates that the applicant resided continuously in the United States from 1981 through the date that document was signed.
16. The statement of [REDACTED] dated January 14, 1990 which indicates that the applicant resided continuously in the United States from 1981 through the date that document was signed.
17. A statement written by the applicant that indicates that the applicant resided continuously in the United States during the statutory period.
18. Transcripts and partial transcripts of testimony provided by the applicant and the applicant's family members on their own behalf in relation to separate proceedings.

There is no other evidence in the record directly relevant to the applicant's claim that she resided continuously in the United States during the statutory period.

On January 10, 2005, the director issued a Notice of Intent to Deny (NOID) which indicated that the applicant had failed to demonstrate continuous presence in the United States during the statutory period. In the NOID, the director also stated that the applicant initially provided a Form for Determination of Class Membership on which she stated that she first entered the United States on 2/81 or February 1981. Yet, at a later date, she provided a Form for Determination of Class Membership on which she stated that she first entered the United States on 3/81 or March 1981. The director indicated that the applicant had provided evidence that was inconsistent which cast doubt on her claim of continuous residence in the United States during the statutory period. He also suggested that it is not plausible that the applicant would have entered the United States without inspection while traveling with a one and one-half month old newborn. For these reasons, the director intended to deny the application.

With the February 2, 2005 rebuttal to the NOID, counsel submitted the July 3, 2003 statement of [REDACTED] an individual claiming to be the President, Sikh Temples Organization of Los Angeles. In this statement, [REDACTED] indicated that the applicant attended services in Sikh temples in greater Los Angeles during the statutory period. [REDACTED] also specifically advised the director to contact him at a telephone number that belongs to a private party who is not connected to the Sikh Temples Organization of Los Angeles.

With the rebuttal, counsel also provided a copy of an immunization record created by a representative of California schools on behalf of the applicant's son [REDACTED]. Counsel indicated that this record represents evidence that the applicant and her son were in the United States during the statutory period because the record lists immunizations that [REDACTED] received during 1981 through 1990. Yet, on its face, this California immunization record specifies that it was not created until January 8, 1990. It is only a transcribed copy of an immunization record which [REDACTED]'s parents presented to a California school official on or about January 8, 1990 on behalf of their son. This record listed vaccinations that Amardeep received prior to January 8, 1990 in locations that are not disclosed on the California school immunization record.

Counsel also provided transcripts and partial transcripts of testimony provided by the applicant and the applicant's family members on their own behalf in relation to separate proceedings.

In the rebuttal brief, counsel also asserted that the two copies of the Form for Determination of Class Membership from the record which her office received in response to a Freedom of Information Act (FOIA) request were *not* inconsistent as the director had stated in the NOID. Counsel stated that the two forms she received were in fact identical and both listed the applicant as having first entered the United States during March 1981. This office would emphasize that the record corroborates the director's assertion that the two Forms for Determination of Class Membership submitted by the applicant clearly demonstrate that one form states that the applicant initially entered the United States during February 1981, and that the second form submitted states that the applicant first entered during March 1981. Moreover, on the first Form I-687 submitted into the record, an original application signed by the applicant on January 5, 1990 under penalty of perjury, the applicant stated that she first entered the United States during 2/81 or February 1981. On the copy of this same Form I-687 submitted into the record at a later date, the "2/81" entry date had been modified to read "3/81". It is not clear to this office how counsel could have received copies of these forms that indicated otherwise in response to a FOIA request, given that the FOIA representatives merely make photocopies of the forms in the record. The FOIA representatives make no modifications to the documents in the record.

Also, in the rebuttal, counsel asserted that it is in fact plausible that an alien could have exited India, entered Mexico, and then entered the United States without inspection, while traveling with a one and one-half month old newborn. This office concurs. Where the director suggested that it is not plausible and as such not credible for the applicant to claim that she entered the United States without inspection traveling with her one and one-half month old son, this point in the NOID and the Notice of Decision is withdrawn.

Counsel concluded that the evidence in the record taken as a whole demonstrates that the applicant was continuously present in the United States during the statutory period.

On September 29, 2005, the director denied the application based on the reasons set out in the NOID. The director added that the telephone numbers listed on the statement of ██████████ President, Sikh Temples Organization of Los Angeles, dated July 3, 2003 are not telephone numbers belonging to the Sikh Temples Organization. Rather, one of the telephone numbers is the cellular telephone number for a private party, and the other is the telephone number for LuminentOIC, Inc. The director attached to the Notice of Decision the statement of the LuminentOIC Payroll and Compensation Manager on LuminentOIC letterhead dated April 19, 2005 that indicates that one of the telephone numbers listed in the letterhead used by ██████████ has been the telephone number for LuminentOIC since 1999. Thus, the director found that the letter of ██████████ was not authentic.

Due to the inconsistencies in the evidence of record and the doubt which that cast on the applicant's evidence, the director determined that the applicant had failed to demonstrate by a preponderance of the evidence that she had resided continuously in the United States from some date before January 1, 1982 through May 4, 1988, and that she was continuously physically present in the United States from November 6, 1986 through May 4, 1988.

On appeal, counsel asserted that the applicant did maintain continuous unlawful residence in the United States throughout the statutory period.

Counsel suggested that the director failed to specify any inconsistency in the record relating to the applicant's claimed March 1981 entry date which led him to find that the applicant had not provided consistent evidence of this entry date. Yet, this office would underscore that the director did specify for the applicant in the NOID and in the Notice of Decision that the applicant had submitted into the record one Form for Determination of Class Membership that stated that she first entered the United States during February 1981 and one that stated that she first entered during March 1981. This discrepancy is especially significant given that her son ██████████ was born on February 19, 1981 and she is claiming to have entered this country with him. As such, it is reasonable to expect the applicant to state with consistency whether she entered the United States within ten days of giving birth, together with her newborn, or whether she entered the United States without inspection when her son was one and one-half months old, as indicated in the rebuttal and on appeal.

On appeal, counsel also submitted the statement of ██████████ dated August 21, 2005 in which ██████████ explained that ██████████ used outdated letterhead when preparing his statement dated July 3, 2003 and that is why the telephone numbers on the statement of ██████████ are not telephone numbers currently used by the Sikh Temples Organization of Los Angeles. ██████████ also explained that ██████████ is elderly and that his health is failing. Counsel indicated that ██████████'s statement remains amenable to verification because it includes an address, and as such the July 3, 2003 statement of ██████████ represents probative evidence. These assertions are not persuasive, especially given that ██████████ claimed to be the President of the Sikh Temples Organization and in the body of his statement specifically requested that he be contacted at a telephone number which belonged to a private individual, who is not associated with the Sikh Temples Organization.

These discrepancies in the evidence cast serious doubt on the authenticity of ██████████'s statement, on the authenticity of the Forms for Determination of Class Membership submitted by the applicant and on the authenticity of the rest of the evidence in the record. This in turn casts doubt on the applicant's claim that she resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988.

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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Such inconsistencies in the record may only be overcome through independent, objective evidence of the applicant's claim that she resided continuously in the United States during the statutory period.

The applicant failed to provide any contemporaneous evidence that might be considered independent, objective evidence of her having resided in the United States from a date prior to January 1, 1982 and throughout the statutory period. As noted above, the immunization record created on January 8, 1990 on behalf of the applicant's son does not represent contemporaneous evidence that the applicant was present in the United States during the statutory period.

This office also finds that the various statements and transcripts of testimony in the record which purport to substantiate the applicant's residence in the United States just before and during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that she maintained continuous residence in the United States in an unlawful status from a date prior to January 1, 1982 through May 4, 1988, and that these statements and transcripts do not have probative value in this matter.

The applicant has failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988. Thus, the applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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