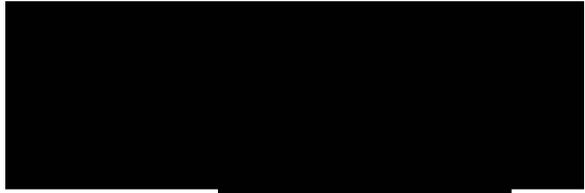


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U.S. Citizenship
and Immigration
Services

L2



FILE: [REDACTED]
MSC 02 092 64504

Office: MILWAUKEE

Date: JUL 01 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. The file has been returned to the National Benefits Center. 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.

for 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, Milwaukee, Wisconsin, 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 entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel for the applicant states that the director erred in denying the application because the director failed to give adequate weight to the evidence submitted. Counsel further asserts that the applicant submitted sufficient credible evidence to establish eligibility.

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), the director stated that the applicant failed to submit sufficient evidence demonstrating that he entered the United States before January 1, 1982, his continuous unlawful residence and his physical presence in the United States, during the requisite period, and evidence that he is admissible. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated June 6, 2006, the director denied the instant application based on the reasons stated in the NOID. The director noted that the record reflected that the applicant had submitted:

- 1) A letter from [REDACTED] stating that the applicant, and [REDACTED], the applicant's wife, were both under his care since 1982;
- 2) An affidavit from [REDACTED], sworn to on November 5, 2003, attesting to knowing the applicant in the United States since December 1981;
- 3) An affidavit from [REDACTED] sworn to on March 26, 2003, attesting to knowing the applicant in the United States since December 1981. Mr. [REDACTED] also attests to knowing [REDACTED] the applicant's wife, since 1981.
- 4) A letter from [REDACTED], President of The Sikh Cultural Society, Inc., dated May 19, 2003, stating that he has known the applicant in the United States since 1983; and,
- 5) An affidavit from [REDACTED] sworn to on July 9, 2003, attesting to knowing the applicant in the United States since October 1985.

On appeal, counsel for the applicant states that the applicant has met his burden of proof as he has submitted sufficient evidence to establish eligibility. Counsel states that the director failed to consider evidence submitted in response to the NOID. With the appeal, counsel re-submits evidence previously submitted in response to the NOID, which consists of:

- 1) A notarized letter from [REDACTED] the applicant's wife, sworn to on May 30, 2006, stating that she and the applicant lived together from 1981 in Jackson Heights, New York, and that the applicant resided continuously in the United States since 1981;
- 2) A notarized letter from the applicant, sworn to on May 30, 2006, stating that he entered the United States through the US-Mexico border in September 1981, and he has been living continuously with his wife in Jackson Heights, New York, from December 1981 to 1990,

except for a brief trip to India to attend his father's funeral from January 1988, to February 1988, and that the applicant resided continuously in the United States since 1981;

- 3) A notarized letter from [REDACTED] sworn to on May 26, 2006, stating that the applicant and his wife lived in Jackson Heights, New York, from October 1985 to September 1990;
- 4) A notarized letter from [REDACTED] notarized on May 25, 2006, attesting to knowing the applicant in the United States since October 1985;
- 5) An affidavit from [REDACTED] sworn to on May 20, 2006, attesting to knowing the applicant in the United States since December 1981. The affidavit was accompanied by page 1 of Form 1040 – U.S. Individual Income Tax Return (together with a W-2 Wage and Tax Statement) for the year 1981; and,
- 6) An affidavit from [REDACTED], sworn to on May 27, 2006, attesting to knowing the applicant in the United States since December 1981.

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 a letter of employment and affidavits as evidence to support his Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

The applicant submitted numerous notarized letters and affidavits in support of his claim. However, these documents are questionable, and therefore, are not probative. It is noted that although most of the affiants attest that the applicant has resided in the United States since December 1981, a copy of the applicant's passport (# [REDACTED]), submitted in connection with his application, reveals that the applicant traveled on a previously issued passport (# [REDACTED]) which was issued at Chandigarh, India, on February 27, 1982. That information is contained in a notation in the passport. These discrepancies cast doubt on whether the applicant's claim that he entered the United States prior to January 1982, and resided continuously since that time is true. 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.

Although the applicant has submitted letters and affidavits in support of his application, the applicant has not provided reliable evidence of his residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. 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.

In addition, the applicant claims that he has resided in the United States since December 1981, however, the applicant has not provided any contemporaneous evidence in support of his claim. It is reasonable to expect that the applicant would be able to provide some reliable contemporaneous documentation if he has been in the United States since 1981 as he claims. Given the applicant's reliance upon questionable letters and affidavits with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States 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.