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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [REDACTED]
MSC 02 239 61738

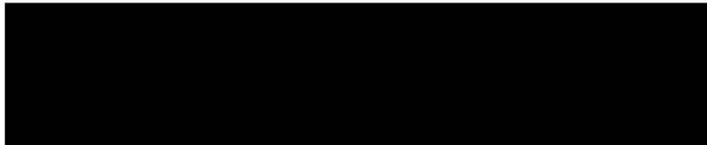
Office: SAN FRANCISCO

Date: JUN 30 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, California, 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) / Request for Evidence, 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. The director granted the applicant thirty (30) days to submit additional evidence.

In response to the NOID/RFE, counsel for the applicant states that the applicant entered the United States without inspection and was not a legal resident, and he cannot obtain documentation to prove his residence, therefore, he can provide only secondary evidence in the form of affidavits. With his response counsel submitted additional evidence and previously submitted evidence. In the Notice of Decision, dated December 22, 2005, the director denied the instant application based on the reasons stated in the NOID/RFE. The director noted that the applicant failed to submit corroborating evidence, and noted discrepancies in the applicant's statements regarding the manner of his entry in the United States, and stamps in his passport.

The record reflects that in support of the application the following letters and affidavits which pertain to the requisite period were submitted:

- 1) An affidavit from the applicant, sworn to on July 11, 2003. The applicant attests that he first entered the United States in October 1980, without inspection, through Mexico; traveled to India in March 1986, and in February 1988, and on both occasions returned to the United States without inspection through Mexico;
- 2) A notarized letter from [REDACTED], dated July 25, 2001, stating that the applicant resided at [REDACTED], Cerritos, California from October 1980 to April 1990;
- 3) A notarized letter from [REDACTED], Owner of A-Z Management and Construction, dated May 9, 2002, stating that the applicant was employed with four of his companies from November 1980 through March 1990;
- 4) A notarized letter from [REDACTED], of Farmers Financial Services, stating that he has known the applicant since December 1981;

- 5) A letter from [REDACTED] dated July 8, 2003, stating that he has known the applicant since January 1, 1986;
- 6) A letter from [REDACTED], dated July 11, 2005, stating that he has known the applicant since 1986;
- 7) An affidavit from [REDACTED] sworn to on May 4, 2002, attesting to knowing the applicant in the United States from October 1980;
- 8) An affidavit from [REDACTED] sworn to on May 4, 2002, attesting to knowing the applicant in the United States from October 1980; and,
- 9) A letter from [REDACTED] Secretary of the Sikh Temple of Los Angeles Sikh Study Circle, Inc., dated May 4, 2002, stating that the applicant had been a member in good standing from 1986 to 1990.

It is also noted that the applicant submitted additional documents, such as tax returns for years 2000, 2001, and 2002, and letters attesting to his residence after 1990, which do not pertain to the requisite period.

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 references evidence previously submitted in response to the NOID, which are included in the documents listed above.

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.

The letter of employment submitted from [REDACTED] for example, is questionable. Mr. [REDACTED] states that the applicant was employed with his companies from November 1980 through March 1990: 1) with American Ceramics from November 1980; with K.R. Films-Hollywood, from 1983 to 1985; with Shenna Construction, from 1985 to March 1990. Also, the applicant, in his affidavit, dated July 11, 2003, states that he had been employed with these companies from November 1980. These affidavits, however, contradict the applicant's statements on his application, Form I-687, wherein the applicant specifies that he had been self-employed from November 1980 until August 1986, and from October 1986. The applicant has failed to reconcile the discrepancies in the affidavits and his application. These discrepancies cast doubt on the applicant's claim that he has resided in the United States prior to January 1982, and resided continuously since that time. 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.

Furthermore, [REDACTED] failed to provide information on the applicant's address at the time of employment, and he does not 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).

It is noted that although most of the affiants attest that the applicant has resided in the United States since October 1980, the applicant has not submitted any supporting documentation to corroborate the affiants' statements.

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.

The applicant claims that he has resided in the United States since October 1980, 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 1980 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 from prior to January 1, 1982, through May 4, 1988.

In addition, the applicant has not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as the applicant had exceeded the forty-five (45) day limit for a single absence from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1)(i).

The record reflects, that by his own affidavit, the applicant attests that he departed the United States on two occasions and he had exceeded the 45 forty-five (45) day limit for a single absence from the United States. In his affidavit, dated July 11, 2003, the applicant stated that he left the United States on March 26, 1986 until May 15, 1986 (an absence of 49 days), and then on February 1, 1988 until April 10, 1988 (an absence of 68 days). The applicant has failed to establish that the absences were for

emergent reasons. The applicant indicates on his Form I- 687 that he went to India in March 26, 1986 to get married, and in February 1988 to visit his ailing mother.

The regulation at 8 C.F.R. § 245a.15(c)(1) provides that an alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

The applicant has failed to provide any documentation that his two absences, each exceeding 45 days, were due to emergent reasons, or that his return to the United States could not be accomplished within the time period allowed. The record reflects that the applicant submitted a letter from Dr. [REDACTED] dated August 8, 1996, stating that the applicant's mother, [REDACTED], was "suffering from ACUTE APHRITIS from 10-11-87 to 28-4-88," and was under his care during that time. However, there is no documentation to establish that the applicant's prolonged absence from February 1, 1988 until April 10, 1988, was necessitated due to his mother's illness. Also, the applicant has failed to provide documentation to establish that his prolonged absence from March 26, 1986 until May 15, 1986, for marriage was for emergent reasons.

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.