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U.S. Citizenship
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FILE:

MSC 02 142 62324

Office: NEW YORK

Date: **MAY 30 2008**

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. 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application, finding that the applicant's testimony was not credible and that he had failed to meet his burden of proof to establish residence in the United States during the statutory period.

On appeal, counsel for the applicant asserts that the applicant is credible and that the director should have verified information provided by the applicant before denying the case.

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 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 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.

The record reflects that on February 19, 2002, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On June 21, 2004, the applicant appeared for an interview based on his application.

On April 29, 2006, the director issued a Notice of Intent to Deny, (NOID), stating that the applicant was not credible. The director noted that the applicant did not submit evidence of his entry without inspection from Mexico into the United States. The director also noted that a letter from the Sikh Cultural Society, Inc., appeared to be fraudulent and that it contradicted the applicant's notation on his Form I-687, Application for Status as Temporary Resident, that he had no affiliation with any organization. The director stated that when asked about his work history, the applicant stated that he had several jobs from October 1981 to May 1988 and referred to an attached Form I-72, Request For Evidence (RFE), dated July 29, 2006. The RFE requested that the applicant submit Social Security printouts for work from January 1, 1982, through May 4, 1988. The director informed the applicant that he had 30 days from the receipt of the NOID to submit evidence to overcome the director's intent to deny his application.

In response to the RFE, the applicant had submitted a statement that he was unable to submit Social Security printouts for work from January 1, 1982, through May 4, 1988, because he did not have a Social Security number throughout this period, and, that he was not issued his Social Security number until April 23, 1990. He did not respond to the NOID.

On September 19, 2006, the director denied the application, finding that the applicant failed to overcome the grounds for denial as stated in the NOID.

On appeal, counsel for the applicant asserts that the applicant is a Sikh by birth and that he visits Sikh temple on a regular basis. Counsel asserts that the applicant's Form I-687 reflected no affiliation with an organization because the applicant thought that organization meant a political organization. Finally, counsel asserts that the letter submitted by the Sikh Temple at Richmond Hill in Queens, New York, is not fraudulent and that the temple has been there since before 1980.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he was continuously physically present in the United States during the requisite period.

There is no indication that the letter, referred to by the director, from The Sikh Cultural Society, Inc., is fraudulent. The director's decision to deny the application on this basis is therefore withdrawn. Little weight can be given to the letter as it relates to the applicant's residence in the United States during the requisite period because the letter merely states that the applicant regularly visited the temple since the 1980's. The letter does not provide a specific date when the applicant began regularly visiting the temple. In addition, the letter does not meet the regulatory standard at 8 C.F.R. § 245a.2(d)(3)(F)(v) because it does not establish the origin of the information being attested to.

The application cannot be approved, however, because the applicant has failed to provide sufficient credible evidence to demonstrate that he was continuously physically present in the United States during the requisite period.

The applicant submitted various documents as well as several affidavits as evidence to support his Form I-485 application. The record includes a Form I-687, Application for Status as Temporary Resident. Some of the evidence submitted indicates that the applicant resided in the United States after his entry without inspection on August 3, 1987, and is not probative of residence before that date. The following evidence relates to the requisite period:

Letters and Affidavits

- A letter notarized on June 16, 2004, from [REDACTED], the applicant's former landlady, and a letter notarized on June 11, 1990, from [REDACTED], the applicant's former landlord. Mrs. [REDACTED] and Mr. [REDACTED] assert that the applicant resided with them from August 1987 to December 1990. They state that he paid a monthly rent of \$120. Neither explains how she or he dates their recollection of when the applicant lived in their house nor do they provide any contemporaneous evidence, such as a lease or rent receipts to corroborate their statements. In addition, they fail to provide sufficient details regarding the three year period they claim the applicant lived in their house. Finally, they refer only to the time period of August 1987 forward. These letters have minimal weight as evidence of the applicant's residence in the United States during the requisite period;
- An affidavit, notarized in India on July 31, 1990, from [REDACTED], the applicant's former roommate. Mr. [REDACTED] states that the applicant resided with him from July 1987 to August 1987, and that his father was admitted to the hospital in Delhi. He does not indicate the address where he and the applicant resided together. He also fails to provide sufficient details regarding the time he claims to have lived with the applicant. This affidavit has minimal weight as

evidence of the applicant's residence in the United States during the requisite period;

- A letter, notarized on May 10, 1990, from [REDACTED] Mr. [REDACTED] states that the applicant lived with his friend in Flushing, New York, from September 1981 to October 1983. He states that he knows the applicant very well and that he is a nice person. He fails to provide sufficient details regarding his claimed relationship with the applicant for over 20 years. This letter has minimal weight as evidence of the applicant's residence in the United States during the requisite period;
- Two letters, one dated April 19, 1990, and one with an illegible date notarized on June 21, 2004, from [REDACTED], manager of Essex Coffee Shop. Both letters are nearly identical except for the date written and state that the applicant was employed as a kitchen helper from October 1981, to October 1983. Mr. [REDACTED] states that the applicant made \$150 a week. This letter fails to comply with the regulatory requirements at 8 C.F.R. § 245a.2(d)(3)(i) as it does not 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, or 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;
- Two affidavits from [REDACTED], the applicant's former roommate and co-worker. In the affidavit notarized on April 25, 1990, Mr. [REDACTED] states that the applicant lived with him in Patterson, New Jersey, from November 1983, to July 1987. Mr. [REDACTED] also states that the applicant was a temporary helper in the kitchen from November 1983 to July 1987, at Kim Coffee Shop in Patterson, New Jersey. He fails to provide sufficient details regarding the four years they lived and worked together. This letter has minimal weight as evidence of the applicant's residence in the United States during the requisite period. In the April 18, 1990, affidavit, Mr. [REDACTED], chief cook at Kim Coffee Shop, states that the applicant was employed by his company as a kitchen helper from November 1983, to July 1987, and that he made \$150 per month. Again, this employment letter fails to comply with regulatory requirements as it does not provide the applicant's address at the time of employment, show periods of layoff, state the applicant's duties, declare whether the information was taken from company records, or 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. Finally, the letter does not appear to be written on company letterhead. *See* 8 C.F.R. § 245a.2(d)(3)(i);

- A letter notarized on April 26, 1990, from [illegible], stating that the applicant worked at Gossip's as a helper from August 1987 to September 1989. This employment letter does not appear to be written on company letterhead and fails to comply with the regulatory requirements as it does not provide the applicant's address at the time of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; or 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. See 8 C.F.R. § 245a.2(d)(3)(i); and,
- A fill-in-the blank affidavit, notarized on June 16, 2004, from [redacted] Mr. [redacted] states that he has personal knowledge that the applicant resided in the United States at various addresses from about November 1983 to the time the affidavit was notarized because he saw the applicant at temple every other Sunday. Mr. [redacted] does not date his recollection of when he first met the applicant or when he or the applicant first starting attending the temple. Furthermore, he provides no detail regarding his claimed relationship with the applicant for over 20 years.

These affidavits can be given little evidentiary weight as they are not sufficiently detailed and fail to meet the applicant's burden of proof to establish his residence during the required time period.

The record of proceedings contains no other documents that address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have entered the United States on August 3, 1987, without inspection, and to have resided for the duration of the requisite period in New York and New Jersey. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

Given the applicant's reliance upon documents with minimal probative value, the applicant has failed to establish continuous residence in an unlawful status in the United States for the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*.

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 December 31, 197, 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.