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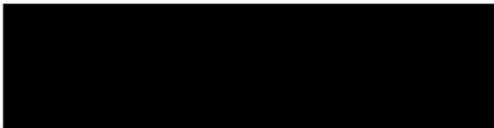
IN RE:

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "R. 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 Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, counsel argues that the director's conclusion that the applicant was in California, Wisconsin and New York at the same time is erroneous as there was no assertion that the applicant was in Wisconsin. Counsel argues that the director failed to address the evidence submitted in response to the Notice of Intent to Deny and gave no valid, reasonable explanation for the rejection of the application.

It is noted that the director, in denying the application, did not address the evidence furnished in response to the Notice of Intent to Deny, and did not set forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i). As such, the documentation submitted throughout the application process will be considered on appeal.

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. Section 1104(c)(2)(B)(i) of the LIFE Act; 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 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.

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. Here, the applicant has failed to meet this burden.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- A notarized affidavit from [REDACTED] manager of 15 Minute Car Wash in Fresno, California, who indicated that the applicant was employed washing cars from February 5, 1981 to December 20, 1986.
- A notarized affidavit from [REDACTED] assistant manager of [REDACTED] Liquor, in Fresno, California, who indicated that the applicant was employed as a cashier from January 10, 1987 to December 28, 1989.
- A notarized affidavit from [REDACTED] of De Pere, Wisconsin, who indicated that the applicant had visited him in January 1981 for approximately 25 days and for a week in December 1987. The affiant asserted, "[w]herever I lived he has visited me many times, and I have also kept in contact with him."
- A notarized affidavit from [REDACTED] York, who indicated that he first met the applicant in February 1981 at a [REDACTED] in Richmond Hill. The affiant asserted that he would meet the applicant when he would visit New York and has kept in touch with the applicant since his first meeting.
- A notarized affidavit from [REDACTED] of Flushing, New York, who indicated that he first met the applicant through a neighbor, [REDACTED], in February 1981. The affiant asserted that the applicant "was looking for employment and he asked me for help. I tried to find him work many times but was unsuccessful." The affiant asserted that he met the applicant many times whenever the applicant was in New York and also kept in touch.
- A letter dated March 5, 2004, from [REDACTED] president of The Sikh Cultural Society, Inc., in Richmond Hill, New York, who indicated that the applicant had been visiting the Gurdwara (Sikh Temple) "on regular since early 1980's during week days and weekends."
- A notarized affidavit from Bhagwant Singh of Flushing, New York, who indicated that he has known the applicant from his village in India. The affiant indicated that he visited the applicant in December 1987 in Fresno, California at [REDACTED]. The affiant attested to the applicant's departure to Canada from December 5, 1987 to December 28, 1987. The affiant asserted that whenever the applicant was in New York, he [the applicant] would visit him.

On April 21, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted appeared not to be credible and were contradictory. Specifically, The Sikh Cultural Society, Inc. is located in New York; however, the affiants all attested to the applicant's residence in the state of California from 1981 to 1990. The applicant was also advised that based on the attestations of Mr. [REDACTED] you could not be in New York, Wisconsin and California at the

same time. There is no proof that any of the affiants has direct personal knowledge of the events and circumstances of your residency.”

The applicant, in response asserted, in pertinent part:

It seems that you thought I was in several places at the same time, this is completely false. I started working at “15 Minute” Car Wash located at [redacted] California as a washer on [redacted]. This is where I first met [redacted] during the last week of January, he was residing at [redacted], [sic] California [redacted] and I lived with him for some time. [redacted] moved to Wisconsin on December 5<sup>th</sup> 1997 for the first time, but according to your letter you believe that I visited him in Wisconsin and that is not true. He was in fact living in California during this time.

I was given only 4 hours work per day and this was not enough work so I was always looking for other work. My friend [redacted] who was living in New York asked me to come to New York in search of work. Hopeful that I would find better work in New York, I took one month off and went to NY on February 25, 1981. Through [redacted], I met [redacted] a card salesman who did business in Richmond Hill, Queens NY frequently. Frank and I became close and he also made several attempts to find me a better job. During this month I would spend my free time at the local Sikh Temple located at [redacted].

Unable to find a job, I returned to California to work at the Car Wash. Every year from December to April, I was given leave due to slow business at the Car Wash. As advised by [redacted], I would leave for NY during this time to sell Newspapers. The pick-up spot for the papers was nearby the Sikh Temple, and thus I was able to frequently visit the temple. This is how I met [redacted] who also sold newspapers and we met on a regular basis on Atlantic Avenue and Van Wyck Expressway in Queens New York, where we sold the papers. While in NY during these times I stayed with [redacted] at his apartment at [redacted].

\* \* \*

Another concern highlighted in your letter was the fact that you have been unable to reach the affiant in order to verify the above information. The affiants’ numbers have changed several times and I repeatedly tried to update their numbers but was told by customer service on your hotline that I could not submit new information until I received this notice. With regards to my good friend H [redacted], he passed away this year. I made several trips back and forth from California and New York on an annual basis for work and that is how I developed long relations with the Sikh Temple in Richmond Hill Queens NY.

The applicant submitted:

- A notarized affidavit from [redacted] of Richmond Hill, New York, who indicated that he and the applicant “sold newspapers in the 1980’s on the same route on Atlantic Avenue and Van Wyck Expressway.” The affiant further indicated that the applicant “lived with me when he came to New York to sell newspapers during the winter time” at [redacted], Richmond Hill, New York.

- An envelope postmarked on February 20, 1986 and addressed to the applicant at [REDACTED] Richmond Hill, New York.
- Two envelopes postmarked in May and June 1986 and addressed to the applicant at [REDACTED], Caruthers, California.
- An envelope postmarked on December 10, 1987 and addressed to the applicant at [REDACTED] Fresno, California.

On appeal, counsel argues that the director mischaracterized the affidavit of [REDACTED] by asserting that the affiant stated he met the applicant in Wisconsin in January 1981 as [REDACTED] was residing in California when he met the applicant in 1981 and did not move to Wisconsin until December 1997. Counsel asserts that the applicant explained that he resided in California from 1981 to 1990, during which time he would travel to New York and spend the winters selling newspapers. Counsel argues that the rejection of the applicant's evidence is not a valid reason and it is based on a mistake of fact.

The statements issued by the applicant and counsel have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988.

The employment affidavits from [REDACTED] failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiant also failed to 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 affidavits from [REDACTED] may only serve to establish the applicant's presence in New York in February 1981. Likewise, the affidavit from [REDACTED] may only serve to establish the applicant's presence in Fresno, California in December 1987. The affiants indicated that they met the applicant when he visited New York; however, the affiants did not specify these dates.

The letter from [REDACTED] has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the affiant does not explain the origin of the information to which he attests. Furthermore, the applicant did not list any affiliation with a religious organization during the requisite period at item 34 on his Form I-687 application.

[REDACTED], in his affidavit, makes no mention of his place of residence during the requisite period or to the location where the applicant purportedly visited him in January 1981 and December 1987. [REDACTED] indicates that the applicant visited the Gurdwara during weekdays and weekends in the early 1980's. As conflicting statements have been provided, it is reasonable to expect an explanation from the affiants in order to resolve the inconsistency. However, no statement from either affiant has been submitted to corroborate the applicant's statement provided in response to the Notice of Intent to Deny.

The applicant claimed to have sold newspapers every year from December to April. The applicant, however, did not claim this employment on his Form I-687 application. Item 36, requests the applicant to list all his employment in the United States since his first entry.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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).

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5<sup>th</sup> ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

The AAO maintains plenary power to review each appeal 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 AAO’s *de novo* authority has been long recognized by the federal courts. See, e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

On his Form I-687 application signed July 17, 1990, the applicant claimed: 1) he departed the United States to Canada on December 5, 1987 and returned December 28, 1987; 2) he was employed at 15 Minute Car wash from February 5, 1981 to December 20, 1986 and at [REDACTED] from January 10, 1987 to December 28, 1989; and 3) residence in Caruthers, California from January 10, 1987 to January 2, 1987, and in Fresno, California from January 2, 1987 to December 29, 1989.

Citizenship and Immigration Services records reflect that the applicant had previously filed a Form I-687 application signed April 21, 1990 and was assigned alien registration number [REDACTED]. In this application, the information listed does not coincide with the prior information the applicant claimed on his current Form I-687 application. Specifically, the applicant claimed; 1) he departed the United States to Mexico on July 25, 1987 and returned August 14, 1987; 2) he was employed at a gas station and selling newspapers from October 1981 to the date the application was signed; and 3) residence in Fresno, California from October 1981 to December 1984, in Caruthers, California from January 1985 to December 1987 and in Reseda, California since January 1985.

This factor tends to establish that the applicant utilized documents in a fraudulent manner in an attempt to support his claim of residence in the United States during the requisite period. By engaging in such an action, the applicant has irreparably harmed his own credibility as well as the credibility of his claim of continuous residence in the United States for requisite period.

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