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U.S. Citizenship
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FILE:

MSC 02 014 60430

Office: LOS ANGELES

Date:

OCT 22 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.

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 Director, Los Angeles, California. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he had entered the United States before January 1, 1982, and had resided continuously in the United States from then through May 4, 1988.

On appeal, counsel for the applicant submits a brief.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

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 its amenability to verification. See 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the

submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(v), states that attestations from churches, should: identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided during the membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

The applicant filed a Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on October 14, 2001. On May 21, 2007, the director denied the application. The applicant, through counsel, filed a timely appeal from that decision on June 25, 2007.

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 from before January 1, 1982 through May 4, 1988.

The record reflects that the applicant has submitted the following documentation in an attempt to establish his continuous unlawful residence in the United States during the requisite time period:

Applicant's Affidavit

- An affidavit, dated December 8, 2003, from the applicant stating that he came to the United States without inspection by crossing the border from Mexico on October 10, 1981. He states that he left the United States on March 2, 1988, to travel to India to visit his mother who was seriously ill and that he returned, again without inspection, by boat from the Bahamas on March 30, 1988.

Affidavits from Acquaintances

- A letter, dated December 5, 2003, from [REDACTED] of Las Vegas, Nevada, listing his ([REDACTED]) various residences in Yorba Linda, Brea, Costa Mesa, and Hawaiian Garden, California, from November 1981 to August 1989, as well as his places of employment in Orange and Los Alamitos, California, from December 1981 to February 1989. Mr. [REDACTED] states that the applicant "...used to visit me every weekend once or twice a month in my residence and I also visited him at his house, especially during special occasion [sic]..." and that the applicant "...used to visit me at the restaurant once in a while and sometimes have lunch or dinner together..." It is noted that [REDACTED] provided a photocopy of an interim driver's license indicating that he lived in Tustin, California, at the time the document was issued to him on March 26, 1987 – not in Hawaiian Garden, California, where he stated he had lived during that time period in his letter.
- A letter, dated July 20, 2004, from [REDACTED] of Reseda, California, stating that he had known the applicant since the middle part of 1984 because he used to go to India Oven Restaurant where the applicant worked as a cook's helper, and that he sees him almost every Sunday at Sri Guru Singh Sabha Temple in Alhambra, California. It is noted that Mr. [REDACTED] states that he came to the United States in 1984 – therefore, he has no knowledge of the applicant's entry or presence in the United States throughout the requisite time period.
- A letter, dated July 21, 2004, from [REDACTED] of Saugus, California, stating that he knew the applicant in India and that after arriving in the United States, they had visited each other at their respective homes on several occasions since 1981. While not required, the affidavit is not accompanied by proof that Mr. [REDACTED] actually resided in the United States during the relevant period, and he is generally vague as to how he dates his acquaintance with the applicant, how often and under what circumstances they had contact during the requisite period, and provides no details that would lend credibility to his alleged over 23-year relationship with the applicant. It is unclear as to what basis [REDACTED] claims to have direct and personal knowledge of the events and circumstances of the applicant's residence in the United States. As such, the statement can be afforded minimal weight as evidence of the applicant's residence and presence in the United States throughout the requisite period.

Sikh Temple Letters

- A letter, dated July 15, 2004, from [REDACTED] identified as the Secretary of Nanak Sadan Sikh Temple in Northridge, California, stating that he had known the applicant since December 1981 when the applicant started coming to the Sri Guru Singh Sabha Temple in Alhambra, California, where [REDACTED] was a member of the Board of Directors and, effective April 1982, served as President for one year. Mr. [REDACTED] does not show the address(es) where the

applicant resided throughout the membership period or establish the origin of the information being attested to (i.e., whether the information being attested to is anecdotal or comes from church membership records).

- A letter, dated December 3, 2003, from [REDACTED], identified as the President and Chairman of Sikh Temple Los Angeles Sikh Study Circle, Inc., in Los Angeles, California, stating that the applicant "...had been coming to the Temple and doing voluntary services in serving Guru Ka Lngar (Free Food Kitchen) to the Sunday Congregations and the homeless..." Dr. [REDACTED] does not provide any dates regarding his knowledge of the applicant's presence in the United States.

Employment affidavit

- An affidavit, dated December 1, 2003, from [REDACTED], the owner of Shere Punjab, Los Angeles, California, stating that he employed the applicant as a waiter from February 1987 until March 1988, during which time the applicant was paid in cash. The employment letter provided is not on company letterhead stationery and does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that it fails to provide the applicant's address at the time of employment; identify the exact period of employment; 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.

Other Documentation

- An affidavit from the applicant's mother stating that while in the hospital in India from March 5, 1988, to March 21, 1988, the applicant visited her from the United States.
- A photocopy of an envelope addressed to the applicant in Whittier, California, which the applicant asserts is date-stamped January 20, 1982. However, the date-stamp is illegible; therefore, the photocopy carries little evidentiary weight or probative value.
- Photocopies of generic rent receipts issued to the applicant on December 2, 1981, July 1, 1982, September 1, 1982, March 4, 1984, and November 2, 1984. Because the receipts are generic, the dates of issuance and the applicant's name and address are hand-written, and the signatures are not legible, the receipts carry little evidentiary weight or probative value.

In summary, for the requisite time period, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv), and no church attestations that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(v)(A) through (G). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security or Selective Service card, automobile license receipts, deeds, tax receipts, insurance policies or other similar documentation) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (I) and (K). The documentation provided by the applicant consists of third-party affidavits ("other relevant documentation"). These documents lack specific details and inconsistencies as to how the affiants knew the applicant – how often and under what circumstances they had contact with the applicant – during the requisite time period.

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 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

It is concluded that the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982, and maintained continuous unlawful residence since such date through May 4, 1988, as required for eligibility for adjustment of status to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, 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.