



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK Date:

**SEP 26 2008**

MSC 02 236 61121

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:

[REDACTED]

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

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. The director noted an inconsistency in the applicant's testimony and application.

On appeal the applicant asks that CIS reconsider his application.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. 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).

An applicant must establish eligibility by a preponderance of the evidence. 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 petitioner 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 petitioner 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 or petition.

Citizenship and Immigration Services (CIS) regulations provide an illustrative list of contemporaneous documents that an applicant may submit to establish presence during the required period. 8 C.F.R. § 245a.15(b)(1); see also 8 C.F.R. § 245a.2(d)(3)(vi)(L). Such evidence may include employment records, tax records, utility bills, school records, hospital or medical records, or attestations by churches, unions, or other organizations so long as certain information is included. The regulations also permit the submission of affidavits and any other relevant

document, but applications submitted with unverifiable documentation may be denied. Documentation that does not cover the required period is not relevant to a determination of the alien's presence during the required period and will not be considered or accorded any evidentiary weight in these proceedings.

On June 23, 2006, the director sent the applicant a Notice of Intent to Deny (NOID), which stated that the evidence submitted by the applicant was insufficiently probative of continuous unlawful residence in the U.S. from prior to January 1, 1982 through May 4, 1988, and continuous physical presence in the U.S. from November 6, 1986 through May 4, 1988.

The applicant did not respond.

On September 27, 2006, the director denied the application because the applicant had failed to establish his continuous unlawful presence during the required period.

On appeal the applicant asks that CIS reconsider his application.

The record is so bereft of evidence the appeal should be dismissed as frivolous. Nonetheless, as the basis of the director's decision includes a finding of fraud the AAO will adjudicate the application on the merits.

Relevant to the period in question the record contains the following evidence:

- (1) Three date stamped envelopes.
- (2) Letter from the Sikh Cultural Society asserting that 'to the best of the affiant's recollection' the applicant has been attending the temple since 1983.

As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation. The minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.12(e).

The letter at No. 2 above is of little probative value, as it is not based on business or church records, but on the unverifiable personal memory of the attestant. It does not meet the minimal criteria established for church letters under 8 C.F.R. § 245a.2(d)(3)(v). *See* 8 C.F.R. 245a.15(b)(1).

In this case the director noted that the date stamped envelopes submitted by the applicant were fraudulent. In response counsel for the applicant says CIS has not submitted the letters for forensics investigation. Counsel should be reminded that it is the applicant's burden to establish eligibility. 8 C.F.R. § 103.2(b)(1). Further, the unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). On appeal the applicant has submitted a document purporting to be from an Indian Post Office. The language of the document is not clear, and the AAO doubts its authenticity. It does not bear an official letterhead, the signature is illegible, and the author's use of English is

such that a clear meaning of the statements cannot be ascertained. This letter is rejected as authentic, credible evidence. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

An examination of the submitted envelopes reveals clearly that they are fraudulent. An agency may make reasonable empirical assumptions based on its experience and history of its regulatory management its field. *NLRB v. Curtin Matheson Scientific, Inc.*, U.S. 775 (1990). It does not take a forensics examination to determine that the Centenary of the Indian National Congress stamp was issued on December 28, 1985. The Simon Bolivar stamp was issued July 24, 1983. Both of these envelopes bear post stamps prior to their date of issue. The fact that counsel attempts to rely on an ambiguously worded document of questionable credibility to contradict such readily available information as the release date of stamps raises serious doubts about counsel's diligence and candor in these proceedings.

Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.*

Counsel cited *Matter of Tijam*, (BIA 1998). Not only is counsel's citation to a dissenting opinion legally inappropriate, counsel's reference is out of context as that case concerned a deportation proceeding and is irrelevant to these proceedings. The burden of proof for these proceedings is guided by *Matter of E & M*, cited above. The applicant has failed to meet that burden.

As stated above the record contains little evidence to begin with, and the evidence that has been submitted appears to be fraudulent. The applicant has not submitted any documentation which supports his assertion that he entered the United States prior to January 1, 1982, and resided unlawfully thereafter for the required period.

The discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the applicant's eligibility is not credible. Accordingly, the applicant has not established the eligibility and the appeal will be dismissed.

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