U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: PHOENIX Date: JUL 13 2006

MSC 03 247 63085

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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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, Phoenix, Arizona, 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.

On appeal, counsel submits additional documentation, which they believe provides sufficient documentation of the applicant's residency in the United States during the required period.

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. Section 1104(c)(2)(B) 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 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.

Although Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant alleges that he first entered the United States in October 1981 without inspection. In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted a copy of a May 31, 2002 letter from Charanjit Singh Sihota, who stated that he has known the applicant since 1980, and that the applicant came to the affiant's home many times. The affiant, however, does not state that the applicant was present and resided in the United States during the required period.

In a Notice of Intent to Deny (NOID) dated July 21, 2004, the director informed the applicant that service records reflect that he submitted a Form I-589, Request for Asylum in the United States, on June 22, 1989, in which he stated that he had attended school in Punjab, India from 1976 to 1985. The director also informed the applicant that on a Form G-325A, Biographical Information, that the applicant signed on June 22, 1989, he indicated that he had resided in India from January 1966 through December 1988. Furthermore, service records reflect that the Border Patrol had apprehended the applicant on December 25, 1988, and at that time, he stated that he obtained his passport in India in 1986, and traveled to Mexico in December 1988 prior to attempting to cross the border through San Ysidro on December 25, 1988. In an interview on July 20, 2004, the applicant denied he had applied for asylum and denied knowing the person who had posted bond for his release in 1988.

In response to the NOID, the applicant submitted:

1. **An August 13, 2004 sworn statement from** [redacted] who stated that he has known the applicant since 1981, and that the applicant lived with him for some time. Mr. [redacted] did not state that the applicant was present and resided in the United States during the qualifying period.

2. **An August 10, 2004 letter from** [redacted] secretary of the Sikh temple of the Pacific Coast. The letter indicated that the applicant "had been living in Fresno . . . and had been visiting this Sikh Temple regularly when he lived in this area." The letter does not indicate that the applicant was present and resided in the United States during the required period.

On appeal, the applicant resubmits the letter from Mr. [redacted] **and submits another letter from** [redacted]. In this September 28, 2004 letter, Mr. [redacted] stated that he has known the applicant and developed a close relationship over the past 24 years. The affiant stated that the applicant resided in Fresno, California from 1980 to 1988, where he worked in the vineyards. This statement, however, contradicts the applicant's earlier statement to the Border Patrol in which he stated that his attempted entry into the United States in 1988 was his first entry. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa application. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The applicant submitted no evidence on appeal that contradicts service records that he was the same [redacted] who applied for asylum in 1989 and stated that he lived in India until 1988. Accordingly the applicant has failed to establish continuous residence in the U.S. for the required period and is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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