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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: SAN FRANCISCO Date: JAN 18 2008
MSC 01 293 60163

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, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988; and that he was continuously physically present in the United States during the period beginning on November 6, 1986, and ending May 4, 1988.

On appeal, counsel asserts that the oral and written testimony submitted was sufficient to prove the applicant's claim. Counsel submits the results of a polygraph examination by the applicant to establish the applicant's truthfulness of his claim and overcome discrepancies in the record.

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)(v) states that letters from churches, unions or other organizations attesting to the applicant's residence must: 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 membership period; include the seal of the organization impressed on the letter or the letterhead of the organization; establish how the author knows the applicant; and establish the origin of the information being attested to.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States prior to January 1, 1982, and whether he continuously resided in the United States in an unlawful status since such date through the May 4, 1988.

In the Notice of Intent to Deny, dated October 31, 2003, the director stated that the applicant failed to meet his burden in establishing his entry prior to January 1, 1982, and continuous unlawful residence in the United States since such date through May 4, 1988. The director provided the applicant 30 days to provide a rebuttal. No rebuttal was received.

In the Notice of Decision (NOD), dated January 30, 2004, the director determined that the applicant failed to establish his continuous unlawful residence in the United States during the requisite period. The director noted that the applicant submitted no evidence that he entered the United States prior to January 1, 1982. The director also noted several discrepancies regarding the applicant's date of entry into the United States and his addresses of residence.

In a June 7, 2005, Motion to Reopen, counsel stated that the applicant had not been properly served the NOD. On August 31, 2005, the director granted the applicant an additional 33 days to file an appeal. The director stated that there was no evidence the NOD had been properly served; however, the record reflected that a hand-delivered copy of the NOD was given to the applicant on June 6, 2005.

On appeal, counsel contends that the applicant's oral and written testimony was sufficient to establish the required residence and physical presence. Counsel submits new evidence establishing the applicant's truthfulness of his claim in the form of a polygraph examination report. Counsel states that because the denial of the applicant's application stemmed in part from the director finding that the written and oral testimony was not credible, the applicant subjected himself to a polygraph examination on September 9, 2005.

The AAO finds that the director denied the instant application on the basis of inconsistent statements by the applicant himself regarding his date of entry into the United States and his addresses of residence. On appeal, counsel does not provide any explanation to reconcile the affiant's statements. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Instead, counsel submits a report of the applicant's polygraph examination. Counsel states that the examination explored the truthfulness of the applicant's physical presence and residence in the United States. Counsel contends that the applicant was found to be truthful in his answers through a scientific method that detects changes in thorax and abdominal breathing, in the electrical resistance of the subject, and in blood pressure and pulse rate. Counsel asserts that the polygraph report corroborates the applicant's testimony and the objective evidence contained in the record.

In federal court proceedings, evidence of the results of a polygraph test is not per se inadmissible. *U.S. v. Cordoba,* 104 F.3d 225, 227 (9th Cir. 1997). The evidence may be introduced when the proffered expert scientific testimony: (1) constitutes scientific knowledge, that (2) will assist the trier of fact to understand the evidence or to determine a fact in issue." *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 590 U.S. 579, 589-91, 113 S.Ct. 2786., 125 L.Ed.2d 469 (1993). In immigration proceedings, however, documentary evidence need not comport with the strict judicial rules of evidence. Instead, "such evidence need only be probative and its use fundamentally fair, so as not to deprive an alien of due process of law." *Matter of Velasquez*, 19 I&N Dec. 377, 380 (BIA 1986); *see also Matter of D*, 20 I&N Dec. 827, 831 (BIA 1994).

In the present case, the polygraph results are not found to be probative. In order to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The report of the applicant's polygraph examination is based on the applicant's own testimony and, therefore, is not sufficient to establish his claim of continuous unlawful residence during the requisite period.

The record also includes the following evidence in support of the applicant's claim of entry into the United States prior to January 1, 1982, and continuous unlawful residence from such date through May 4, 1988.

1. A May 20, 2002, subscribed and sworn affidavit of witness by [redacted] who stated that to his personal knowledge the applicant resided in the United States from September 1981 to April 1990. The affiant stated that the applicant resided at [redacted] Sacramento, CA from September 1981 to June 1984, and at [redacted] Glendale, CA from June 1984 to April 1990. The affiant provided his current address.

2. A June 3, 2002, subscribed and sworn affidavit of witness by [redacted] who stated that to his personal knowledge the applicant resided in the United States from

September 1981 to April 1990. The affiant stated that the applicant resided at [redacted] Sacramento, CA from September 1981 to June 1984. The affiant provided his current address.

3. A May 27, 2002, statement by [redacted] who stated that the applicant resided at [redacted] Sacramento, CA from around September 1981 through June 1984.

4. An undated, subscribed and sworn affidavit of witness by [redacted], who stated that to his personal knowledge the applicant resided at [redacted], Sacramento, CA from November 1981 to the present. The affiant stated that the applicant left the United States on June 11, 1987, for a two week emergency visit to his country of birth. The affiant provided his current address.

In an April 26, 2002, interview, the applicant stated that he initially entered the United States in September 1981. The applicant submitted the above affidavits of witness in support of his claim. As noted by the director, the applicant also submitted a notarized self-employment letter, dated May 30, 2002. The applicant stated that he continuously resided in the United States since December 12, 1981. The applicant has contradicted his own statement, as well as the statements of his affiants. In addition, the statement of [redacted] states that the applicant resided at one address from 1981 to the present, which contradicts the statements of the other affiants. Although given an opportunity on appeal, neither the applicant nor counsel has submitted any independent objective evidence to reconcile these discrepancies.

Furthermore, although not required, none of the affidavits included any supporting documentation of the affiant's identity or presence in the United States. None of the affiants indicated how they dated their acquaintance with the applicant or how frequently he saw the applicant. The absence of sufficiently detailed and supporting documentation to corroborate the applicant's claim of entry into the United States before January 1, 1982, seriously detracts from the credibility of his claim.

The record also includes a February 3, 1984, rent receipt addressed to the applicant with the address [redacted] Van Nuys. This receipt contradicts the affiant's statements as well as the information provided on the applicant's Form I-687, Application for Status as a Temporary Resident, dated April 5, 1990. In his Form I-687, the applicant stated that he resided at [redacted], Sacramento, CA from September 1981 to June 1984, and at [redacted] Glendale, CA from June 1984 to the present. Neither the applicant nor the affiants indicated that the applicant ever lived at [redacted]

The record also includes four receipts dating from 1984 to 1987. These receipts have no address or any other identifying information which indicate they belong to the applicant.

The applicant submitted a June 10, 1983, prescription receipt from a Pay n' Save in Lodi, CA, with the applicant's name printed on it. As noted by the director, the applicant did not indicate that he ever resided in Lodi, CA.

The applicant submitted an August 5, 1982, letter to a "[redacted] from Transamerica Occidental Life Insurance Company. The applicant also submitted a September 27, 1985, prescription receipt from a Thrifty Drug Store in Lodi, California, made out to a "[redacted] There is nothing in the record to identify the relationship between the applicant and the name on the receipt.

The applicant submitted two letters from the Sikh Temple in Los Angeles. In a November 23, 2003, letter [redacted] president and chairman of the Sikh Temple, stated that he has personally known the applicant since 1984. [redacted] also stated that the applicant had done volunteer work through the organization. The affiant failed to show inclusive dates of membership, state the address where the applicant resided during membership period, and establish the origin of the information being attested to as required under 8 C.F.R. § 245a.2(d)(3)(v).

The applicant also submitted a May 28, 2002, letter by [redacted], VP (Admin and Ex-Director, Management Committee and Board of Directors of the Sikh Temple. The affiant stated that the applicant resided at [redacted] Glendale, CA 91206, and had been a regular member of this organization for about five years from 1984 to 1990. The affiant stated that this information was obtained from his personal knowledge and association with the applicant, as well as from the membership records. While this letter testifies to the applicant's residence after 1984, it does not establish the applicant's presence in the United States prior to January 1, 1982, up to 1984. It is also noted that the applicant did not indicate that he was a member of this organization on his Form I-687.

The applicant also submitted four identical affidavits of witness forms, which indicated that the applicant resided in the United States from 1984 to 1990.

i. A May 27, 2002, subscribed and sworn affidavit of witness by [redacted], who stated that to his personal knowledge the applicant resided in the United States from June 1984 to April 1990. The affiant provided his current address.

ii. A May 28, 2002, subscribed and sworn affidavit of witness by [redacted] who stated that to his personal knowledge the applicant resided in the United States from June 1984 to April 1990. The affiant provided his current address.

iii. A November 19, 2003, subscribed and sworn affidavit of witness by [redacted] who stated that to his personal knowledge the applicant resided in the United States from June 1984 to April 1990. The affiant stated that he met the applicant at the Sikh Temple in Los Angeles, CA. The affiant also provided his current address.

iv. A November 20, 2003, subscribed and sworn affidavit of witness by [redacted] who stated that to his personal knowledge the applicant resided in the United States from June 1984 to April 1990. The affiant stated that he met the applicant at a birthday party in 1984. The affiant provided his current address.

Although not required, none of the affidavits included any supporting documentation of the affiant's identity or presence in the United States. Only two of the affiants indicated how they dated their acquaintance with the applicant. None of the affiants indicated how frequently they saw the applicant. The absence of sufficiently detailed and supporting documentation to corroborate the applicant's claim of continuous unlawful residence in the United States seriously detracts from the credibility of his claim.

The applicant has submitted numerous documents as evidence to support his claim, but the evidence contains multiple inconsistencies. A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime an application includes numerous errors and discrepancies, and the applicant fails to resolve those errors and discrepancies after provided an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the applicant's assertions.

The AAO agrees with the director and finds that the applicant has failed to provide relevant, probative, and credible evidence. The instant applicant contains multiple inconsistencies and contradictory statements by the applicant and affiants. The absence of consistent supporting documentation to corroborate the applicant's claim of entry into the United States since before January 1, 1982, and continuous unlawful residence through May 4, 1988, seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance on inconsistent statements regarding his first date of entry into the United States and the affiants' contradictory statements, it is concluded that he has failed to overcome the basis for the director's denial.

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 May 4, 1988, 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.