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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: SEATTLE Date: NOV 04 2008

MSC 01 335 61326

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: Self-represented

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.

for 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, Seattle, Washington, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

> (B) *Meaning of affected party.* For purposes of this section and §§ 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

Although the record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, authorizing _____ to act on behalf of the applicant, is no longer authorized to represent the applicant pursuant to 8 C.F.R. § 292.1(a).[1] As such, the decision will be furnished only to the applicant.

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, the applicant asserts that he had met his burden of proof and that the director failed to apply the required evidentiary standard and illegally denied his application. The applicant argues that to presume the receipts are forgeries with any stated basis is unfair and unwarranted. The applicant submits copies of documents that were previously provided.

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

[1] *See* http://www.usdoj.gov/eoir/profcond/chart.htm

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] of Fresno, California, who indicated that he resided with the applicant from October 1981 to September 1987 at [redacted], Fresno, California. The affiant asserted that all bills and statements were in his name.
- A notarized affidavit from [redacted] of Fresno, California, who indicated that he used to own and operate an Ice Cream truck and that the applicant was in his employ as a helper from 1981 to 1989. The affiant indicated that the applicant resided at [redacted], Fresno, California during his employment.
- Affidavits from [redacted] and [redacted] of British Columbia, Canada, who attested to the applicant's visit to Canada. Mr. [redacted] indicated that the applicant visited him from December 5, 1987 to December 20, 1987 and [redacted] indicated that the applicant stayed at his home from December 6 to December 10, 1987.
- A notarized affidavit from [redacted] of Des Moines, Washington, who indicated that he met the applicant at a Sikh Temple in Alhambra, California in March 1987 and has been in touch with the applicant since that time.
- A notarized affidavit from [redacted] of Bakersfield, California, who indicated that he has known the applicant since January 1987 and has been in touch with the applicant since that time.
- A notarized affidavit from [redacted] of Seattle, Washington, who indicated that he personally knows that the applicant has been residing in the United States since 1984 and that the applicant visited him a few times from November 6, 1986 through May 4, 1988.
- Notarized affidavits from [redacted] of Burlington, Washington and [redacted] of Kent, Washington who indicated that they personally know the applicant has been residing in the United States prior to January 1, 1982 and from 1986, respectively.
- A notarized affidavit from [redacted] of Kent Washington, who indicated that the applicant visited him in Kansas City in December 1981 and he has remained in touch with the applicant since that time.

In response to the Form I-72 dated June 13, 2002, the applicant submitted a grocery receipt, an instruction document and warning notice for a bed frame, a motel receipt and a postmarked envelope.

On June 11, 2003, the director issued a Notice of Intent to Deny, which advised the applicant that as the motel receipt dated October 17, 1987 was handwritten it could have been issued at any time. The grocery receipts did not contain the applicant's name. The instruction form for the bed frame listed the date of the model frame as February 16, 1990 and the bed frame instruction was the publication date of the warning notice, not the date of purchase. The director noted that the envelope was postmarked in 1984.

Although the director indicated that the envelope was postmarked in 1984, it is not conclusive as the year is obscured and, therefore, it cannot be determined the exact year the envelope was postmarked during the 1980's.

The applicant, in response, submitted donation receipts dated January 22, 1982 and February 19, 1988 from The Sikh Society of Seattle (Washington) and a receipt dated Augusts 18, 1987 from Canoga Park Service Center in Canoga Park, California.

The director, in denying the application, once again discredited the receipts submitted in response to the Form I-72. The director noted that the motel receipt indicated that a single person driving a Toyota rented a room for one night and the automobile receipt dated August 18, 1987 listed a license number; however, the applicant did not provide any evidence that he had a California driver license or that an automobile was registered in his name. The donation receipts were handwritten and shared the same probative difficulties as the motel receipt. The director determined that the applicant had not provided credible, verifiable evidence to establish his continuous residence in the United States during the requisite period.

The statements issued by the applicant 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 applicant claimed to have resided at [redacted] Fresno, California from October 1987 to December 1990; however, he provided no evidence to establish this claimed residence.

The employment affidavit from [redacted] 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 as required under 8 C.F.R. § 245a.2(d)(3)(i.

The affidavits from [redacted] and [redacted] raise questions to their authenticity as the applicant did not claim an absence from the United States during December 1987 on his Form I-687 application.

indicated that he had personal knowledge of the applicant's residence in the United States prior to January 1, 1982. However, the affiant failed to state the applicant's place of residence, provide details regarding the nature or origin of his relationship with the applicant or the basis for his continuing awareness of the applicant's residence. [redacted] attested to the applicant's residence since 1984, but failed to state the applicant's place of residence and state how he was aware of the applicant's residence. The remaining affidavits cannot serve as evidence to establish the applicant's entry into the United States prior to January 1, 1982 as the affiants did not meet the applicant until 1986 and 1987. In addition, the

affiants all claimed "to have known" the applicant, but no attestations to the applicant actual residence in the United States were indicated.

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 evaluation of the applicant's claim is a factor on both the quality and quantity of the evidence provided. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the affidavits submitted by the applicant are lacking in probative value and evidentiary weight and, therefore, 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.

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