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U.S. Department of Homeland Security
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Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: GARDEN CITY Date: MAR 10 2009

MSC 02 064 61732

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).

IN BEHALF OF APPLICANT:

[redacted]

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

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

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, counsel asserts that the director has failed to consider the totality of the evidence and testimony given by the applicant. Counsel states that the applicant has submitted relevant, probative, and credible evidence and affidavits to support his claim. Counsel asserts that the affidavits are not amenable to verification because of the lengthy periods of time that have elapsed since the initial statutory application period.

An applicant for permanent resident status under section 1104 of the LIFE Act 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 and 8 C.F.R. § 245a.11(b).

The applicant 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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 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 statement dated January 19, 2004, from [redacted], who indicated he has known the applicant since 1982. The affiant asserted that every Sunday he goes to Gurudwara (church) in Richmond Hill and the applicant meets him there.
- A letter dated January 25, 2004, from [redacted] of [redacted] in Richmond Hill, New York, who indicated that the applicant has been a member of its congregation since 1981.
- Affidavits from [redacted] and [redacted] of Richmond Hill, New York, who indicated that they have known the applicant since October 1981 and January 1986, respectively.

On May 17, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted did not contain sufficient objective evidence to which they could be compared to determine whether the attestations were credible, plausible, or internally consistent with the record, and that no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified in their respective affidavits. The applicant was advised that no evidence was submitted to corroborate his absence from the United States from October 9, 1987 to October 24, 1987. The applicant was advised that based on his claim on his Form I-687 application to have been employed at "odd jobs" and residing "at different addresses" during the requisite period, it was not possible to account for his whereabouts since 1981.

The applicant was further advised that he had indicated on his LIFE application to have children born in India on August 5, 1980, February 23, 1983, and October 19, 1986. However, on his Form I-687 application, he listed one absence from the United States; October 9, 1987 to October 29, 1987. The director questioned how the applicant fathered the youngest two children if he was supposedly residing in the United States since October 1981.

The director, in denying the application on August 18, 2007, noted that the applicant failed to respond to the Notice of Intent to Deny. The record, however, reflects that a response was received prior to the issuance of the director's decision. The response will be considered on appeal.

Counsel, in response, asserted that the applicant has submitted affidavits properly prepared and executed in support of his continuous residence during the requisite period. Counsel asserted that at the time of the applicant's LIFE interview, he provided detailed addresses and employment history for the entire statutory period. Counsel claimed that the applicant's spouse entered the United States in October 1981, and resided with the applicant until 1982 when she returned to India. The spouse reentered the United States in the beginning of 1985 and resided with the applicant until March 1986. Counsel submitted:

- An additional affidavit from [redacted] who indicated that he met the applicant in November 1982, kept in touch via the telephone, and met on alternate weekends at several gatherings. The affiant asserted that to the best of his recollection the applicant has been physically present in the United States since November 1982 except for a brief visit to India in 1987 to see his new born son.
- An additional affidavit from [redacted] who indicated that she first met the applicant at the Sikh Temple in Richmond Hill in December 1981. The affiant asserted that to the best of her recollection the applicant has been physically present in the United States since December 1981 except for a brief visit to India in 1987 to see his new born son.
- An affidavit from the applicant indicating that [redacted] passed away on January 3, 2006.
- A letter dated December 15, 1987, from an individual with an indecipherable name, attesting to the applicant's employment at [redacted] in New York City as a supervisor from September 20, 1985 to December 7, 1987.
- A letter dated August 19, 1985, from an individual with an indecipherable name, attesting to the applicant's employment at [redacted]. in New York City as a supervisor from November 10, 1982 to August 10, 1985.

The U.S. Citizenship and Immigration Services (USCIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--, supra.* In ascertaining the evidentiary weight of such affidavits, USCIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--, supra*, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. 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, as he has presented contradictory and inconsistent documents, which undermines his credibility.

The employment affidavits failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiants 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. It is unclear why the applicant would keep employment letters dated in *1985 and 1987,* but not documentation such as lease agreements, utility bills or rent receipts during this period and subsequent years. Furthermore, the signatures on the letters are indecipherable, thereby giving rise to questions whether each signature is that of a person who was authorized and affiliated with the company.

The letter from [redacted] has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the affiant does not explain the origin of the information to which he attests. In addition, the applicant did not list any affiliation with a religious organization during the requisite period at item 34 on his Form I-687 application.

[redacted] in his affidavit. attested to knowing the applicant since November 1982, but provided no address of residence for the applicant during the requisite period. Mr. [redacted] also indicated that the applicant would meet him every Sunday at the Gurudwara. The applicant, however, did not list any affiliation with a religious organization during the requisite period at item 34 on his Form I-687 application.

The remaining affiants failed to state the applicant's place of residence during the requisite period, provide any details regarding the nature of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim.

Counsel asserts that the applicant's spouse was in the United States from October 1981 to 1982 and again in 1985 until March 1986. However, no credible evidence was submitted to support this assertion. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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 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). Given the credibility issues arising from the documentation provided by the applicant, it is determined that 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.