



U.S. Citizenship
and Immigration
Services

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FILE:



Office: San Francisco

Date: **MAR 28 2005**

IN RE:

Applicant:



PETITION: 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:



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. 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, Director
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 evidence submitted by the applicant had not established 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 for the applicant submits a separate statement in which he asserts that the evidence provided by the applicant should serve to establish his continuous residence in the U.S. during the period in question.

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. 8 C.F.R. § 245a.12(e). When something is to be established by a preponderance of evidence it is sufficient that the proof only establish that it is *probably* true. See *Matter of E-- M--*, 20 I&N Dec. 77 (Comm. 1989). Preponderance of the evidence has also been 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).

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).

In an attempt to establish continuous unlawful residence since before January 1, 1982, as claimed, the applicant furnished the following evidence:

- A communication from [REDACTED] of the Sikh Cultural Society, Richmond Hill, New York, who states he has known the applicant since 1986;
- A "to whom it may concern" notarized affidavit from an unspecified affiant residing in India attesting to the applicant having departed India for the U.S. in September 1981;
- An affidavit from [REDACTED] attesting to the applicant having resided in the U.S. since October 1981;
- An affidavit from [REDACTED] attesting to having resided with the applicant from 1985 to 1987;
- An affidavit from [REDACTED] who attests to having known the applicant since 1982 and to having shared an apartment for a period of 5 months;

- An employment affidavit from [REDACTED] of B.B.S. Home Improvement Contractors, Ridgewood, New York, who attests to having employed the applicant on a part-time, cash basis as a mason and brick repairer from January 1982 to August 1989;
- An employment affidavit from [REDACTED] of Sirpunch Construction Company, Brooklyn, New York, who attests to having employed the applicant from 1984 to 1987;
- An affidavit from [REDACTED] who attests to the applicant having resided in the U.S. since October 1981;
- An employment affidavit from [REDACTED] of [REDACTED] New York, who attests to the applicant having worked as a mason's helper from December 1981 to December 1989;
- Photocopies of Form 1040 U.S. Income Tax Returns purportedly completed by the applicant for the years 1982, 1983, 1984, and 1985;
- A store receipt dated June 6, 1983 from [REDACTED] Jamaica, Queens, made out to the applicant;
- An Air Mail envelope sent to the applicant in Jamaica, New York, carrying a stamped postmark date which is indecipherable; and
- A photocopied Air Mail envelope sent to the applicant in Jamaica, New York, carrying a stamped postmark date which is indecipherable.

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. In the notice of decision, the district director noted that the affidavits provided by the applicant failed to indicate the manner of the applicant's entry, i.e., whether the applicant entered the U.S. illegally without inspection or legally by means of a nonimmigrant visa. However, as noted by counsel on appeal, there is no requirement in the applicable regulations at 8 C.F.R. that an affidavit in support of an applicant's claim to continuous residence must also include detailed information regarding the applicant's manner of entry into the U.S.

Nevertheless, the notice of decision does take account of numerous deficiencies in the affidavits provided by the applicant in support of his claim. The aforementioned affidavit entitled "to whom it may concern" fails to include the name of the affiant or the affiant's address or telephone number. Such a document is inherently unverifiable. While the unspecified affiant, who indicates he resides in India, attests to the applicant having resided in the U.S. since September 1981, he fails to specify the basis for arriving at this conclusion.

The affidavits from [REDACTED] and [REDACTED] attest to the applicant's residence in the U.S. since October 1981 as a matter of the affiants' "personal knowledge," but fail to specify the basis for their knowledge. The affidavit from [REDACTED] indicates the affiant and applicant resided together from 1985 to 1987, but does not specify the actual address where the two resided. The affidavit from [REDACTED] attests to the applicant and affiant having shared an apartment at [REDACTED], New York. However, the applicant's completed Form I-687 Application for Status as a Temporary Resident under Section 245A of the

Immigration and Nationality Act (INA) fails to include this address at item 33, in which an applicant is requested to list *all* of his residences since the date he or she first entered the U.S.

The applicant has also submitted three (3) affidavits attesting to his employment during the period in question -- one from B.B.S. Home Improvement Contractors, one from [REDACTED], and one from [REDACTED]. However, at item 36 of the applicant's I-687 application, in which an applicant is requested to list *all* of his employment in the U.S. since the date of his entry, only the applicant's employment for [REDACTED] is listed.

By way of contemporaneous evidence, the applicant has provided a store receipt, along with Air Mail envelopes sent to the applicant from acquaintances in India. However, the stamped postmark dates included on the front of the envelopes are indecipherable for purposes of establishing when the envelopes were actually sent. The applicant has also submitted photocopies of completed income tax returns for the years 1982 through 1985. However, as indicated in the notice of intent to deny, the record includes a note from the Internal Revenue Service confirming that it had *no* record of any tax filings from the applicant for these years.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner 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). Neither the applicant nor counsel have endeavored to address or resolve these discrepancies and inconsistencies in the documentation, which diminishes the credibility of the applicant's claim.

As previously indicated, most of the affidavits submitted by the applicant provide little or no information as to how the affiants and applicant initially became acquainted, the nature of their relationships, or the basis for the affiants' knowledge of how long the applicant has resided in the U.S. Additionally, many of the affidavits attesting to residence are not accompanied by the affiants' phone numbers, thereby failing to provide a means by which the affiants may be readily contacted for purposes of verification.

Given the numerous discrepancies and inconsistencies arising from the applicant's supporting documentation, along with his reliance on affidavits which do not meet basic standards of probative value, it is concluded that he has failed to establish continuous residence in an unlawful status from prior to January 1, 1982 through May 4, 1988, as required.

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