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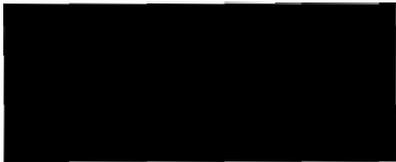


FILE: MSC 02 123 61711 Office: SAN FRANCISCO Date: SEP 22 2006

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:



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, San Francisco, California, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

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 from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel provides copies of previously submitted documents in support of the appeal.

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. 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).

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence throughout the application process:

- A statement from [REDACTED] manager of Seven Eleven at 10011 Mills, Avenue, Whittier, California, who indicated that the applicant was employed from November 1981 to December 1990.

- An affidavit notarized November 30, 2001 from [REDACTED] of San Rafael, California, who indicated that he first met the applicant in December 1982. The affiant asserted that in 1983 and 1984 the applicant visited his business on several occasions and inquired about employment within his company. The affiant indicated that the applicant was been in his employ since 1991.
- An affidavit notarized November 30, 2001 from [REDACTED] of San Rafael, California, who indicated that he first met the applicant in November 1982 at a Sikh Temple in Fremont, California. The affiant asserted that in 1983 and 1984 the affiant asserted that the applicant visited him on several occasions and he has remained in conduct with the applicant through social gatherings and by telephone since that time.
- An affidavit notarized December 3, 2001 from [REDACTED] of Nicasio, California, who attested to the applicant's residence in California since December 1981. The affiant asserted that he met the applicant at a Sikh Temple in Fremont, California and he has remained in conduct with the applicant through social gatherings and at religious places since that time.

In response to a notice dated January 16, 2003, counsel submitted:

- A letter dated March 16, 2003 from [REDACTED] of The Sikh Center in El Sobrante, California, who certified that the applicant has been a member since 1983. The affiant asserted that the applicant participates in religious services on Wednesday and Sundays.

An affidavit notarized March 19, 2003 from [REDACTED] of Antioch, California, who indicated that he first met the applicant on April 13, 1983 at the [REDACTED] in El Sobrante, California. The affiant asserted that he has remained in contact with the applicant since that time.

- An affidavit notarized March 20, 2003 from [REDACTED] of American Canyon, California, who indicated that he first met the applicant in the United States on January 1, 1985 at the [REDACTED] in Fremont, California. The affiant asserted that he has kept in contact with the applicant since that time.
- An affidavit notarized March 21, 2003 from [REDACTED] of Suisun City, California, who attested to the applicant's residence in California since 1981. In April 1982, the affiant asserted that he invited the applicant to visit him in San Francisco, and they attended the [REDACTED] at the Sikh Temple in El Sobrante. The affiant asserted that the applicant had visited his residence in Oakley, California on several occasions during the 1980s.

The applicant also submitted an affidavit dated May 11, 1991 from [REDACTED] Mr. [REDACTED] failed to provide a telephone number or address and, therefore, the affidavit is not amenable to verification by the Citizenship and Immigration Services.

The director, in denying the application, noted:

You were unable to remember details about your plane trip to the U.S. in 1981 when you were 19 years old. You did not provide details about how you were able to hide in "a compartment" of a pickup truck to cross the Mexican border at Tijuana based only on what you were able to hear from

this compartment. A credible statement of a 19 year old at such an important event in his life would certainly contain more facts.

It would be unreasonable to expect any individual to be able to recall each and every specific detail that occurred over a period in excess of twenty or more years regardless of his age at the time. The statements of counsel on appeal regarding the amount and sufficiency of the applicant's evidence of residence have been considered. Furthermore, the applicant's contention that his inability to produce additional evidence of residence for the period in question is the result of the passage of time and his undocumented immigration status is considered to be a reasonable explanation in these circumstances.

In this instance, the applicant submitted evidence, including contemporaneous documents, which tends to corroborate his claim of residence in the United States during the requisite period. The applicant provided affidavits from individuals, all whom provide their current addresses and/or telephone numbers and indicate a willingness to testify in this matter. The district director has not established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. As stated in *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the asserted claim is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The documentation provided by the applicant supports by a preponderance of the evidence that the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.