



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]
MSC 02 152 60775

Office: LOS ANGELES

Date: MAR 22 2007

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. 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, Los Angeles, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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).

The record reflects that on February 21, 1995, at the Los Angeles Inspections Office, a record of sworn statement in affidavit form was executed. The applicant under oath, admitted the following:

The applicant was asked when did he first enter the United States and he stated:

1981 illegally I walked from the Canadian border to Seattle, Washington. I stayed only 1 day then I went to Los Angeles, California. I stayed in Los Angeles 2 or 3 years. Then I go back to Vancouver, Canada. I stayed there for 6 months. I came back to Los Angeles and I am still here.

The applicant was asked had he ever returned to India since his illegal entry in 1981 and he stated:

Today is the first time I went back to India. I had never went back to India since I entered in 1981. I went to India November 1994 and I am coming back today.

The applicant was asked had he ever obtained or applied for a United States non-immigrant visa. The applicant stated no to both questions.

The applicant was asked about his employment in the United States. The applicant stated that his first job was at a 7-11 store in 1988.

When asked what he did from 1981 to 1988, the applicant stated:

Well I want to change story. I first came to United States in 1981 illegally from Canada I walked into the United States. I stayed in the United States for six months but I could find no work. I went back to Canada with my bad India passport (name used: [REDACTED]). I live in Montreal, Canada for 3 years. I came back illegally to the United States from Canada, in 1988. I went to Whittier, California and I got my first job in restaurant in Artesia. Then my second job was at 7-11 in Whittier, California. Finally, in 1992 I got my own store, Food Store in Ontario, California.

On December 14, 2004, the director issued a Notice of Intent to Deny, advising the applicant of his sworn statement above. The applicant was also advised that the church donation receipt dated February 17, 1983 with a telephone area code of 510 raised questions of credibility as the area code was not introduced until 1991. The director determined based on the applicant's sworn statement and the falsify church donation receipt, the remaining receipts and affidavits presented were deemed not credible.

Counsel, in response, submitted additional affidavits from the applicant's brother, [REDACTED] and affiants, [REDACTED], and [REDACTED] attesting to the applicant's residence in the United States since 1981. Counsel also submitted copies of documents that were previously submitted. Counsel asserted:

The applicant submits that as far as he can remember at the interview held on April 8, 2003, he was not confronted nor had been given any opportunity to look to his alleged sworn statement of February 21, 1995 with an Immigration Officer. The applicant further submits that he can provide an adequate explanation if can look into the said statement. The applicant submits that the said statement is not correct and the applicant had been in continuous stay in the United States from 1981 onwards.

The applicant submits that the finding of the Service regarding the falsity of the church donation receipt is not correct. The Service should have called upon the church authorities for their explanation about the alleged discrepancy in the phone number. Again to discredit the rest of the receipts only on that account is unjust and patently wrong.

* * *

The applicant submits that there are no real discrepancies as alleged or otherwise so as to warrant any adverse conclusion. The applicant further submits that he is and has always been ready and willing to satisfy the discrepancy, if any is found.

Counsel's claim that the applicant was not given the opportunity to review his sworn statement is not supported by the record. The record reflects that on January 20, 1998, the applicant put forth a Freedom of Information Act (FOIA) request. A copy of all the material contained in his record at the time was released to the applicant on February 13, 1998. Furthermore, a review of the interviewing officer's notes taken at the time of the applicant's LIFE interview indicates the applicant was informed of his sworn statement. Accordingly, the applicant was **aware** of the derogatory information at the time he executed the sworn statement, and again in 1998 when he received said material pursuant to his FOIA request and at the time of his LIFE interview.

As conflicting documentation have been provided, it is reasonable to expect an explanation from the affiant in order to resolve the contradiction. However, no statement from the Hindu Temple has been submitted to resolve the contradicting donation receipt.

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).

Even in cases where the burden of proof is upon the government, such as in deportation proceedings, a previous sworn statement voluntarily made by an alien is admissible, and is not in violation of due process or fair hearing. *Matter of Pang*, 11 I. & N. Dec. 213 (BIA 1965).

It is significant that, even though the applicant has been made aware of the contents of his February 21, 1995 sworn statement, the applicant has neither recanted his statement nor addressed this matter on appeal. In light of his sworn statement, the documentary evidence submitted by the applicant, in an attempt to establish continuous residence in the United States during the requisite period, cannot be considered as having any probative value or evidentiary weight.

The applicant has, therefore, failed to establish that he resided in *continuous* unlawful status in the United States from before January 1, 1982 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.

Beyond the decision of the director, it is noted that the record contains additional discrepancies regarding the applicant's entries and departures into the United States. As noted above, the applicant admitted in his sworn statement that he had never obtained or applied for a United States non-immigrant visa. Citizenship and Immigration Services' record, however, reflects that an individual with the exact name and date of birth as the applicant entered the United States on October 19, 1986 with a non-immigrant visa. In addition, the applicant admitted in his sworn statement that 1994 was his first visit back to his native country India. The record, however, reflects that the applicant indicated on his Form I-687 application that he departed the United States to India in November 1987 and returned in January 1988. As the appeal will be dismissed on the grounds discussed above, these issues need not be examined further.

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