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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

LV

[REDACTED]

FILE: [REDACTED] MSC 02 004 62285

Office: SACRAMENTO

Date: **OCT 09 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, 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 applicant had not: 1) demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988; and 2) maintained continuous physical presence in the United States from November 6, 1986 through May 4, 1988.

On appeal, the applicant asserts that he has presented sufficient evidence to establish continuous unlawful residence in the United States during the requisite period. The applicant asserts due to his illegal immigration status during the requisite period, it is not possible to present legal documents such as a driver license, tax records or pay stubs.

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).

Here, the submitted evidence is not relevant, probative, and credible. 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 an acquaintance, [REDACTED] who indicated he knew from personal knowledge that the applicant has been residing in the United States since 1981. The affiant attested to the applicant's absence to India from November 20, 1987 to December 31, 1987.
- A notarized affidavit from his spouse, [REDACTED] of Gridley, California, who indicated she entered the United States without inspection in May 1986 and April 1987 and departed to India in December 1986 and on November 20, 1987, respectively. The affiant asserted she resided with the applicant upon her entry in 1987.
- A letter dated September 17, 2002, from [REDACTED] religious secretary of Sikh Religious Society of Chicago, who indicated the applicant has been a member of the society since 1979, which caters to the spiritual needs of Sikhs from Illinois, Indiana and Wisconsin. The affiant asserted he has known the applicant since 1981 during the time the applicant was residing in Chicago, Illinois at [REDACTED]. The affiant asserted the applicant resided in the Chicago area from 1981 to 1990 and during this period, he regularly attended religious services on Sundays and other special Sikh days.
- A notarized affidavit from [REDACTED], who indicated he resided with the applicant at [REDACTED], Illinois in 1981. The affiant asserted, "[f]or sometime thereafter [the applicant] lived alone, but often visited my place and kept very intimate relations with me."
- A notarized affidavit from [REDACTED] of Wheeling, IL, who indicated he met the applicant in 1982 at their religious place in Palatine, Illinois. The affiant asserted that he has remained friends with the applicant and they have seen each other on occasion.

In response to a Request for Evidence issued on July 16, 2002, counsel asserted: a) the applicant did not have any identification papers; b) he worked in odd jobs at various places where he was residing; c) he received his wages in cash; and d) he resided with friends and people known to him and paid cash to these individuals for his shared expenses. Counsel also submitted an affidavit from the applicant indicating, "I was self-employed in various capacities as general handyman at different places during my stay in USA."

The director issued a Notice of Intent to Deny dated February 11, 2004, which advised the applicant that at the time of his LIFE interview on July 16, 2002, he failed to provide credible evidence to establish that he was physically present in the United States before January 1, 1982. The applicant was advised that the affidavits submitted could not be corroborated with any other credible evidence and, therefore, had not probative value. The applicant, in response, submitted copies of the affidavits that were previously provided.

The director, in denying the application on May 28, 2004, noted that in an attempt to verify the authenticity of the affidavits provided, Citizenship and Immigration Services (CIS) contacted [REDACTED] on May 24, 2004. [REDACTED] stated that he first met the applicant at the temple in Palatine, Illinois approximately 14 years ago around 1989 or 1990 and attested to the applicant's residence in Chicago in 1989 or 1990. [REDACTED] stated that he first met the applicant in 1992 during the time he and the applicant were residing together in Chicago at [REDACTED]. The director further noted that on May 13 and 24, 2004, CIS attempted to contact [REDACTED], and on each occasion, voice messages were left, but as of the date of the denial notice, CIS had not received a response from [REDACTED]. The director determined due to the inconsistencies between the affidavits and the affiants, the affidavits were deemed not credible and lacked little or no probative value.

On appeal, the applicant argues that his application should be granted as it was not possible for him to apply for any legal documentation. However, the denial of this application was not based on the premise that the applicant did not have any legal documentation during the requisite period, but rather the applicant had failed to present sufficient evidence to establish continuous residence and physical presence during the period in question.

The applicant asserts that he has presented numerous affidavits from United States citizens who have personal knowledge of his presence during the requisite period. The applicant contends that the affidavits submitted were sufficient and reliable as they clearly described how they met him, "since when they know him, his place of residence, his work, his immigration status, etc." Regarding the letter from [REDACTED] the applicant argues that CIS did not try to know the reason for not returning the call and came to a conclusion that the affiant was unreliable.

The applicant submits a letter from [REDACTED] that explains the reasons for not returning the telephone calls. In his affidavit, [REDACTED] asserts that the priest who answered the telephone calls lost the telephone number, and as such, he was unable to contact CIS. The affiant reaffirmed his statements made in his letter of September 17, 2002.

The applicant also submits an additional affidavit from [REDACTED], who asserts, in part:

That I misunderstood INS when I made the statement that I didn't exactly recall the date of meeting [the applicant]. That I indeed meet him when he was attending Sikh Religious temple every Sunday. This affidavit is prepared for the US citizenship and INS service to assure that I did know [the applicant] since 1982.

While 8 C.F.R. § 245a.2(d)(3) sets forth specific criteria which affidavits of residence from employers and organizations should meet to be given substantial evidentiary weight, we look to *Matter of E-- M--*, *supra*, for guidance in determining the appropriate criteria for affidavits from other third party individuals.

CIS has determined that affidavits from third party individuals may be considered as evidence of continuous residence. 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 or her knowledge for the testimony provided. The AAO, however, does not view the affidavits discussed above as substantive enough to support a finding that the applicant entered and began residing in the United States before January 1, 1982. Specifically:

1. [REDACTED] indicates that the applicant has been a member of the Sikh Religious Society since 1979 and resided in Chicago at [REDACTED] from 1981 to 1990. The applicant, however, claimed he did not enter the United States until 1981, and on his Form I-687 application, he indicated residence at this address until 1984. Further, the applicant did not list any affiliation with a religious organization during the requisite period at item 34 on his Form I-687 application.
2. [REDACTED] claimed to have known the applicant since 1982 and has remained friends with the applicant since that time. As such, he cannot attest to the applicant's residence in the United States prior to 1982. Further, the affiant provided no address for the applicant during the period in question.

3. Based on [REDACTED] statement on May 24, 2004 to have first met the applicant in 1992, his previous submitted affidavit has no probative value or evidentiary weight.
4. [REDACTED] attested to the applicant's residence in the United States since 1981, but provides no address for the applicant during the period in question, and no details regarding the nature or origin of his relationship with the applicant or the basis for his continuing awareness of the applicant's residence.
5. No evidence such as a lease agreement, rent receipts, utility bills or affidavits from affiants who the applicant resided with during the requisite period was submitted to corroborate his residence.
6. [REDACTED] indicated she resided with the applicant from April 1987 to November 20, 1987, but provided no address for the applicant.
7. The applicant also claimed on his Form I-687 application to have resided in Wisconsin during the requisite period. However, he provided no evidence to corroborate this residence claim.

These factors raise questions about the authenticity of the documents the applicant has presented in attempt to continuous residence in the United States prior to January 1, 1982 through May 4, 1988.

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).

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.