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FILE: [Redacted] Office: SAN FRANCISCO Date: **APR 02 2008**
MSC 01 292 60221

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits [or Records] 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.

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, 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 failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel asserts that the director erred in denying the instant application and requests the proceedings be remanded so that the affiants may testify in support of the instant application.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 or 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)(v) states that letters from churches, unions or other organizations attesting to the applicant's residence must: identify the applicant by name; be signed by an official whose title is shown; show inclusive dates of membership; state the address where the applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization; establish how the author knows the applicant; and establish the origin of the information being attested to.

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.

In the Notice of Intent to Deny (NOID), dated January 15, 2003, the director requested evidence in support of the applicant's claim. The director granted the applicant ninety (90) days to submit evidence. The record reflects that no evidence was received. In the Notice of Decision, dated December 13, 2005, the director denied the instant application due to a lack of credibility on the part of the applicant and his affiants. The director also stated that the applicant failed to submit any convincing documentary evidence to support testimony and affidavits for periods before 1988.

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 support of the applicant's claim, the record contains the following relevant evidence:

1. An undated declaration by [REDACTED] (name illegible), president of Sikh Temple Los Angeles. The declarant certified that the applicant has been an active member of the **Sikh temple since 1981**. On appeal, counsel asserts that the declarant provided inclusive dates of membership and otherwise identified the applicant. However, it is noted that the declarant failed to state the address where the applicant resided during membership period and establish the origin of the information being attested to as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(v). It is also noted that the record contains a Form I-687, Application for Status as a Temporary Resident, signed by the applicant under penalty of perjury on December 28, 1989. In his Form I-687, at Question 34, the applicant is asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc. The applicant wrote "None." There is nothing in the record to explain the discrepancy between the declarant and the

the applicant is asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc. The applicant wrote "None." There is nothing in the record to explain the discrepancy between the affiant and the applicant's statements. This discrepancy brings into question the credibility of the declarant and detracts from the credibility of the applicant's claim.

2. Two virtually identical, fill-in-the-blank affidavits by [REDACTED] and [REDACTED] dated on December 29, 1989. Both of the affiants stated that they have personal knowledge that the applicant has resided in the United States from June 1981 to the present. Both of the affiants stated that the applicant is their cousin. Both of the affiants provided their current address of residence. Although not required, none of the affidavits included any supporting documentation of the affiants' presence in the United States during the requisite period. The affiants failed to state how frequently they saw the applicant.
3. It is noted that the record contains a Form for Determination of Class Membership in *CSS v. Meese*, signed by the applicant under penalty of perjury. At Question 6, the applicant stated that he first entered the United States in October 1981. The applicant has contradicted the statement of his affiants, who stated the applicant's residence began in June 1981. There is nothing in the record to explain this discrepancy. This inconsistency, combined with the absence of sufficiently detailed affidavits, seriously casts doubt on the credibility of the applicant's claim.
4. The record also contains a declaration by [REDACTED], dated December 29, 1984. Ms. [REDACTED] stated that the applicant worked for A&B Ceramics from June 1981 to April 1986 as a caster. The affiant stated that the applicant's hourly rate started at \$3.75 per hour and ended at \$5.00 per hour. The affidavit failed to provide the applicant's address at the time of employment, declare whether the information was taken from company records, 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 as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(i). Moreover, as previously noted, the applicant stated that he entered the United States in October 1981, which contradicts the declaration of Ms. [REDACTED]

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record contains no independent objective evidence to explain the above inconsistencies.

The applicant has not provided sufficient credible, contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be

the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with numerous discrepancies, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence 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.

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