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[Redacted]

FILE: [Redacted] Office: SAN FRANCISCO Date: **AUG 01 2008**
[Redacted] incorporated)
MSC 02 071 67112

IN RE: Applicant: [Redacted]

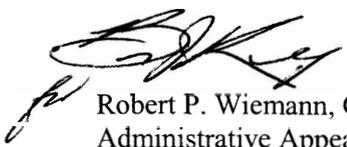
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the
Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat.
2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763
(2000).

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 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

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 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)/Request for Evidence (RFE), dated January 16, 2003, the director requested that the applicant submit evidence establishing that he had entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988. The applicant was also requested to list all absences from the United States. In response, the applicant submitted the following:

1. An affidavit from Inderjit [REDACTED] dated April 9, 2003, stating that he has known the applicant to reside in the United States since November 1981 when the applicant arrived in the United States. [REDACTED] also states that the applicant was staying free at the Sikh Temple in Yuba City, California, and has kept in touch with the applicant;
2. An affidavit from [REDACTED] br, dated March 24, 2003, stating that he has known the applicant to reside in the United States since December 1981. [REDACTED] also states that he first met the applicant at a Sikh festival at the Sikh Temple in Yuba City, California, and has met the applicant occasionally at social events and Sikh temples;
3. An affidavit from [REDACTED] dated March 22, 2003, stating that the applicant came to the United States in 1981. [REDACTED] also states that he first met the applicant at the Sikh Temple in Yuba City, California, in November 1981, and has kept in touch with the applicant through the telephone and meets him occasionally;
4. An affidavit from [REDACTED] l, dated January 27, 2003, stating that he first met the applicant during a Sikh festival at the Sikh Temple in Yuba City, California, in December

1981, and they have been meeting each other occasionally at various events, including social gatherings and religious events;

5. An affidavit from [REDACTED] dated April 5, 2003. The affiant attests to knowing the applicant to reside in the United States since April 13, 1982, and states that since that time they have frequently kept in touch with each other; and,
6. A notarized letter dated October 1, 2001, from [REDACTED] Nanak Sikh Temple, stating that the applicant has been a regular member of the temple from November 1981 to March 1987.

In the Notice of Decision, dated February 10, 2006, the director denied the instant application based on the reasons stated in the NOID.

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. The applicant submitted a letter of employment and affidavits as evidence to support his Form I-485 application. 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, in addition to the evidence submitted in response to the NOID/RFE (listed above):

Employment Letter

The applicant submitted a letter of employment from Chinnaswamy Naidu of [REDACTED] Restaurant, located at [REDACTED], California, dated August 9, 1990, who indicated that the applicant had been employed as a part-time helper from 1982 through 1985.

It is noted however, that the letter appears to have been altered to include a sentence: "He was also Provided Residence at my home when he was [he was] working my restotent][restaurant]." In addition, the letter of employment does not state when in 1982 the employment commenced, failed to provide the applicant's address at the time of employment, show periods of layoff, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i).

Affidavits

Although the applicant has submitted six affidavits in support of his application, the applicant has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the

quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

It is noted that the record contains a 1997 affidavit submitted by the applicant's former spouse, [REDACTED] in connection with a previous Petition for Alien Relative, Form I-130, and an accompanying Application for Adjustment of Status, Form I-485, which contradicts the affidavits and letter of employment provided. According to the affidavit from the applicant's former spouse, [REDACTED] she married the applicant on January 22, 1985, in India; then, after giving birth to a child, she and her husband started having problems and she was forced to stay with her parents; then she discovered that her husband deserted her and went to live abroad; and, she obtained a dissolution of the marriage, due to her husband's desertion. It is noted that the affidavit evidently was submitted to establish that the applicant had been divorced as he sought permanent residence status through marriage to a U.S. Citizen.

On appeal, counsel contends that according to information provided on the applicant's I-687 application, he married [REDACTED] India on January 22, 1980, and she was present in the United States with the applicant from January 1980. Counsel submits another affidavit by [REDACTED], dated March 20, 2006, wherein she disavows the contents of the affidavit which pertains to the dissolution of her marriage. [REDACTED] Bassi claims that she never executed the 1997 affidavit, and claims that she and her husband (the applicant) entered the United States in October 1981, and she returned to India to give birth to her child on August 8, 1987, and re-entered the United States on August 16, 1987.

However, at this late stage, the applicant cannot avoid the record he has created. As noted above, the record of proceeding contains an affidavit from [REDACTED] attesting to her marriage to the applicant in India in 1985 which ended in divorce after she gave birth to a child in India and discovered that the applicant had deserted her and gone overseas to live. The applicant submitted that affidavit as proof of his divorce in 1997 and as evidence that he was eligible to marry the petitioner. Contrary to counsel's assertion, the applicant is attempting to make a mockery of the immigration law because indications are that one or both of the affidavits are false. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the

discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status 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.