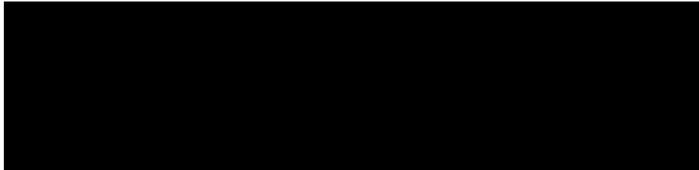


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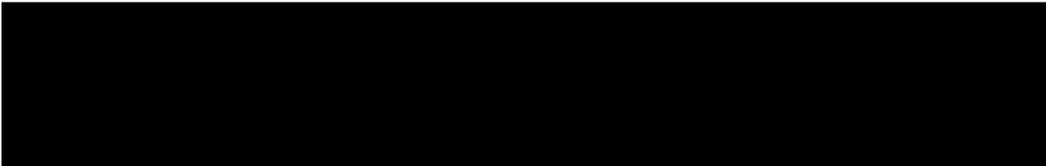
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FILE: [REDACTED] Office: SACRAMENTO, CALIFORNIA Date: FEB 25 2008  
MSC 02 239 62925

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. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the late legalization provisions of the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Sacramento, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. The director also indicated that the applicant failed to provide sufficient, credible evidence that he was continuously present in the United States during the statutory period beginning on November 6, 1986 and ending on May 4, 1988.

On appeal, counsel asserts that the applicant did maintain continuous unlawful residence and physical presence in the United States during the statutory periods.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must establish his or her continuous, unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act states in relevant part:

(i) In General – The alien must establish that he or she entered the United States before January 1, 1982, and 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.

*See also* 8 C.F.R. § 245a.11(b).

The definitions set forth at 8 C.F.R. § 245a.10 state in relevant part that under the LIFE Act:

Eligible alien means an alien (including a spouse or child as defined at section 101(b)(1) of the Act of the alien who was such as of the date the alien alleges that he or she attempted to file or was discouraged from filing an application for legalization during the original application period) who, before October 1, 2000, filed with the Attorney General a written claim for class membership, with or without filing fee, pursuant to a court order in the case of:

(1) Catholic Social Services, Inc. v. Meese, vacated sub nom. Reno v. Catholic Social Services, Inc., 509 U.S. 43 (1993)(CSS);

(2) League of United Latin American Citizens v. INS, vacated sub nom. Reno v. Catholic Social Services, Inc., 509 U.S. 43 (1993) (LULAC); or

(3) Zambrano v. INS, vacated, 509 U.S. 918 (1993)(Zambrano).

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 states 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 petitioner 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 petitioner 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 or petition.

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.

The record indicates that on or near January 18, 1990, the applicant’s father applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On May 27, 2002, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The record contains the following documents relating to the applicant’s claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988:

1. The statement of [REDACTED] dated July 3, 2003 on what appears to be letterhead stationary in which [REDACTED] indicated that he is the President of the Sikh Temples Organization of Los Angeles. He also stated that the applicant attended services at this temple on at least a weekly basis from 1981 through 1993. Two telephone numbers for the Sikh Temples Organization are listed within the letterhead of this document. [REDACTED] also specifically included one of these telephone numbers in the body of his statement and indicated that that telephone number should be used to contact him.
2. The statement of [REDACTED] dated August 21, 2005 in which [REDACTED] explained that [REDACTED] used outdated letterhead when preparing his statement dated July 3, 2003 and that is why the telephone numbers on the statement of [REDACTED] are not in fact telephone numbers currently used by the Sikh Temples Organization of Los Angeles.

3. The statement of [REDACTED] Luminent OIC, Payroll and Compensation Manager, dated April 19, 2005 in which [REDACTED] indicated that one of the telephone numbers listed in what appeared to be the Sikh Temples Organization of Los Angeles letterhead stationary used by [REDACTED] in his July 3, 2003 statement had been the telephone number for Luminent OIC since December 1999.
4. The statement of [REDACTED] dated July 4, 2003 which indicates that the applicant, his brother and his parents resided continuously in the United States during the statutory period. [REDACTED] also stated that he employed the applicant's parents during the statutory period.
5. An additional statement written by [REDACTED] which is not dated that indicates that the applicant's parents worked at stores owned by [REDACTED] j from 1981 through November 1989. [REDACTED] also stated that from 1981 through November 1989 the applicant, his brother and his parents resided at [REDACTED] Altadena, California 91001.
6. An additional statement bearing the same signature as that seen on item #5 above which is not dated. The signature is not legible and the name of the person who wrote the statement is not written below the signature. However, it does appear that this statement was also written by the same [REDACTED] as wrote the statement summarized at item #5. This statement indicates that the applicant's father worked at a 7-11 Food Store located at [REDACTED] [REDACTED], Monterrey Park, California, as a stock clerk from March 1981 through May 1984.
7. The applicant's father's Form I-687, Application for Status as a Temporary Resident, which at Item #33, where the applicant's father was to list all of his residences since his first entry into the United States, states that the applicant's father first began residing in the United States during September 1981, and that his first address was [REDACTED] Altadena, California.
8. A statement written by the applicant's father that indicates that the applicant resided continuously in the United States during the statutory period. The applicant's father also stated that after his second son, Amardeep, was born on February 19, 1981, he and his wife decided to leave India. Thus, he sold a piece of land during March 1981 to finance transporting himself and his family from India to Mexico. He specified that Amardeep was one and one-half months old when the family made the trip to Mexico.
9. The first copy of the applicant's father's Form for Determination of Class Membership in *CSS v. Meese* submitted into the record which states at Item #6 that the applicant's father first entered the United States in 2/81 or February 1981.
10. The second copy of the applicant's father's Form for Determination of Class Membership in *CSS v. Meese* submitted into the record that is altered at Item #6 to state that the applicant's father first entered the United States in 3/81 or March 1981.
11. A statement written by [REDACTED] dated July 5, 2003 that indicates that in 1982 the applicant's uncle in India informed [REDACTED] that the applicant and his family were

residing in the United States. [REDACTED] also indicated that he encountered the applicant, his brother and his parents in the United States during 1983. He indicated that the applicant's family has lived in the United States since that time.

12. A statement written by the applicant's mother that indicates that the applicant resided continuously in the United States during the statutory period.
13. A statement written by the applicant that indicates that the applicant resided continuously in the United States during the statutory period.
14. Transcripts of testimony provided by the applicant and the applicant's family members on their own behalf in relation to separate proceedings.

There is no other evidence in the record directly relevant to the applicant's claim that he resided continuously in the United States during the statutory period.

On July 8, 2003, the director issued a request for further documentation such as evidence of the applicant's continuous residence in the United States during 1981 through 1988, including school or church records and affidavits. The director emphasized that the affidavits should be current and amenable to verification, and that affiants should provide a copy of some form of identification. On October 7, 2003, the applicant through counsel provided a response to the request for further documentation, including a completed Form G-325A, Biographic Information. The response indicated that the applicant's grammar school had not yet responded to a request for evidence of the applicant's school attendance. Counsel also asserted that the applicant had already provided sufficient documentation of his continuous residence in the United States during the statutory period to meet his burden of proof.

On January 10, 2005, the director issued a Notice of Intent to Deny (NOID) which indicated that the applicant had failed to demonstrate continuous presence in the United States during the statutory period. On February 2, 2005, the applicant through counsel responded by asserting that in the January 10, 2005 NOID the director had failed to identify what he found lacking in the applicant's evidence.

August 10, 2005, the director issued a second Notice of Intent to Deny (NOID). In the NOID, the director indicated that he intended to deny the application for the following reasons. First, the director indicated that the applicant had submitted a letter from [REDACTED] dated July 3, 2003 which did not appear to be authentic. That is, the letter indicated that the applicant and his family attended services at [REDACTED] temple on a regular basis during 1981 through 1993. However, the director telephoned the two telephone numbers listed within the letterhead stationary used by [REDACTED] and obtained the following results. On August 5, 2005, the director telephoned the number listed in the letterhead stationary and specifically cited in the body of [REDACTED] letter as being his contact number of preference. The director learned that this telephone number is not the number for a Sikh temple. Instead, it is the telephone number for a private cellular telephone belonging to [REDACTED] and that she had had this telephone number since 2000. On April 19, 2005, the director telephoned the other number listed in the Sikh Temples Organization of Los Angeles letterhead stationary used by [REDACTED]. This telephone number is used by the company Luminent, OIC. As a courtesy, the company's Payroll and Compensation Manager provided to the director on Luminent, OIC, letterhead stationary a statement that indicated that this company had used this same telephone number since December 1999.

The director also pointed to inconsistencies in the record. For instance, the applicant's father's Form I-687, Application for Status as a Temporary Resident, in the record, at Item #33, where the applicant's father was to list all of his residences since his first entry into the United States, states that the applicant's father first began residing in the United States during September 1981, and that his first address was [REDACTED] Altadena, California. However, the first copy of the applicant's father's Form for Determination of Class Membership in *CSS v. Meese* submitted into the record states at Item #6 that the applicant's father first entered the United States in 2/81 or February 1981. Moreover, the second copy of the applicant's father's Form for Determination of Class Membership in *CSS v. Meese* submitted into the record is altered at Item #6 to state that the applicant's father first entered the United States in 3/81 or March 1981.

Due to the inconsistencies in the evidence of record and the doubt which that cast on the applicant's evidence, the director determined that the applicant had failed to demonstrate by a preponderance of the evidence that he had resided continuously in the United States from some date before January 1, 1982 through May 4, 1988, and that he was continuously physically present in the United States from November 6, 1986 through May 4, 1988.

In the September 6, 2005 rebuttal to the NOID, the applicant submitted the statement of [REDACTED] dated August 21, 2005 in which [REDACTED] explained that [REDACTED] used outdated letterhead when preparing his statement dated July 3, 2003 and that is why the telephone numbers on the statement of Dr. [REDACTED] are not in fact telephone numbers currently used by the Sikh Temples Organization of Los Angeles.

Also submitted with the rebuttal was another version of that first copy of the applicant's father's Form for Determination of Class Membership submitted into the record, referred to above. As noted earlier, the copy of this form already in the record states at Item #6 that the applicant's father first entered the United States during 2/81 or February 1981. The copy resubmitted on rebuttal, and which counsel claimed was obtained from the record via a Freedom of Information Act (FOIA) request, has been altered such that it indicates that the applicant's father first entered the United States in 3/81 or March 1981. Counsel also provided the second copy of this form submitted into the record, which was obtained via a FOIA request. This is altered at Item #6 such that the "2/81" originally on this form has been written over to state that the applicant's father first entered the United States in 3/81 or March 1981. This office notes that while both copies of the form submitted with the rebuttal appear to have originally stated "2/81" as the date of the applicant's father's entry, and that while both have been altered to read "3/81", they still are not identical copies, as suggested by counsel in the rebuttal. That is, the "2/81" on the first form at Item #6 has been altered to read "3/81" in a different manner than the "2/81" of the second copy was altered to read "3/81." Yet, the applicant submitted the two forms as copies of the same form which his father filled in during January 1990 when preparing to apply for class membership. Thus, regardless of whether the two copies vary in that the first one submitted reads "2/81" and the second one submitted reads "3/81," or whether they vary in that the handwritten responses of "3/81" do not match one another, the authenticity of this evidence is called into question.

Counsel also indicated that the listing of September 1981 as the date that the applicant's father began residing in the United States was a clerical error on the Form I-687. Counsel suggested that the preparer may have been working quickly and confused the applicant's father with a different [REDACTED]. In the alternative, the preparer may have been thinking of September, rather than March, because it was in September 1989 that the family returned to this same address from India.

Counsel concluded that various statements and transcripts of testimony in the record as well as the applicant's Form G-325A taken as a whole demonstrate that the applicant was continuously present in the United States during the statutory period in India.

On September 29, 2005, the director denied the application based on the reasons set out in the NOID.

On appeal, the applicant through counsel indicates that he did maintain continuous unlawful residence in the United States throughout the statutory period.

The AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO's *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.<sup>1</sup>

On appeal, counsel asserted that the statement of [REDACTED] of the Sikh Temples Organization of Los Angeles in the record remains probative evidence of the applicant's continuous residence in the United States during the statutory period, even though the contact telephone numbers listed in that statement are not telephone numbers associated with the Sikh Temples. Counsel suggested that [REDACTED] used outdated letterhead stationary with telephone numbers which were no longer being used by the Sikh Temples Organization of Los Angeles when writing his July 3, 2003 statement. Counsel also indicated that the letter remains amenable to verification because it includes an address. The statement of [REDACTED] dated August 21, 2005 which also suggested that [REDACTED] simply made the error of using outdated letterhead was also submitted into the record. These assertions are not persuasive, especially given that [REDACTED] in the body of his statement specifically requests that he be contacted at a telephone number which the record demonstrates for years had belonged to a private individual, not connected with the Sikh Temples Organization.

This discrepancy in the evidence casts serious doubt on the authenticity of [REDACTED]'s statement and on the rest of the evidence in the record. This in turn casts doubt on the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988.

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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The applicant's inability to provide consistent evidence of when he and his family entered the United States and began residing in the United States casts further doubt on his claim that he resided continuously in the United States during the statutory period. The applicant submitted a copy of his father's Form I-687 that

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<sup>1</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

indicates that his family began residing in the United States during September 1981. The applicant also submitted into the record copies of his father's Form for Determination of Class Membership which indicate that his father has resided in the United States since March 1981 or February 1981. Such inconsistencies in the record may only be overcome through independent, objective evidence of the applicant's claim that he resided continuously in the United States during the statutory period.

The applicant failed to provide any contemporaneous evidence that might be considered independent, objective evidence of his having resided in the United States from a date prior to January 1, 1982 and throughout the statutory period.

This office also finds that the various statements and transcripts of testimony in the record which purport to substantiate the applicant's residence in the United States just before and during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States in an unlawful status from a date prior to January 1, 1982 through May 4, 1988, and that these affidavits and statements do not have probative value in this matter.

The applicant has failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988. Thus, the applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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