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FILE:

MSC 02 165 62727

Office: SAN FRANCISCO

Date:

JAN 09 2008

IN RE: Applicant:

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. The file has been returned to the National Benefits Center. 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 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 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 on the basis that the applicant did not establish his physical presence during the requisite period. Counsel submits the results of a polygraph examination by the applicant to establish the applicant's truthfulness of his claim.

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.

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 since before January 1, 1982, through the May 4, 1988.

In the Notice of Decision, dated August 12, 2005, the director determined that the applicant failed to establish his continuous unlawful residence in the United States from prior to January 1, 1982, through May 4, 1988. The director noted that the applicant submitted an unverifiable affidavit from [REDACTED]. The affiant claimed personal knowledge of the applicant's residence in Delano, California from March 1981 to August 1990. However, the affiant indicated that he met the applicant in 1987 at a religious function in Fresno, California. The director considered the affiant's two statements to be a serious contradiction. The director also noted that the applicant submitted an envelope postmarked from India on November 10, 1985. The director stated that the envelope did not prove the applicant's residence during the qualifying periods.

On appeal, counsel contends that the applicant's oral and written testimony was sufficient to establish the required residence and physical presence. Counsel submits new evidence establishing the applicant's truthfulness of his claim in the form of a polygraph examination report. Counsel states that because the denial of the applicant's application stemmed in part from the director finding that the written and oral testimony was not credible, the applicant subjected himself to a polygraph examination on September 2, 2005.

The AAO finds that the director denied the instant application on the basis of contradictory statements by the affiant, [REDACTED]. On appeal, counsel does not provide any explanation to reconcile the affiant's statements. 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).

Instead, counsel submits a report of the applicant's polygraph examination. Counsel states that the examination explored the truthfulness of the applicant's physical presence and residence in the United States. Counsel contends that the applicant was found to be truthful in his answers through a scientific method that detects changes in thorax and abdominal breathing, in the electrical resistance of the subject, and in blood pressure and pulse rate. Counsel asserts that the polygraph report corroborates the applicant's testimony and the objective evidence contained in the record.

In federal court proceedings, evidence of the results of a polygraph test is not per se inadmissible. *U.S. v. Cordoba*, 104 F.3d 225, 227 (9<sup>th</sup> Cir. 1997). The evidence may be introduced when the proffered expert scientific testimony: (1) constitutes scientific knowledge, that (2) will assist the trier of fact to understand the evidence or to determine a fact in issue." *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 589-91, 113 S.Ct. 2786., 125 L.Ed.2d 469 (1993). In immigration proceedings, however, documentary evidence need not comport with the strict judicial rules of evidence. Instead, "such evidence need only be probative and its use fundamentally fair, so as not to deprive an alien of due process of law." *Matter of Velasquez*, 19 I&N Dec. 377, 380 (BIA 1986); see also *Matter of D*, 20 I&N Dec. 827, 831 (BIA 1994).

In the present case, the polygraph results are not found to be probative. In order to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The report of the applicant's polygraph examination is based on the applicant's own testimony and, therefore, is not sufficient to establish his claim of continuous unlawful residence during the requisite period.

Even if the report was taken at face value, on page 4 of the polygraph report under Testing Score Requirements, the report states that "Any score which achieves a result of a Plus Two (+2) to a Minus Two (-2), regardless of how close to either side, is regarded as INCONCLUSIVE, and from which the Examiner may draw no inference." On the page titled Axciton Chart Analysis, the report indicates that the applicant scored +2% Probable No Deception Indicated. Therefore, based on the testing score requirements, the applicant's score is inconclusive. No negative or positive inference can be determined. No inference can be drawn with which to determine the applicant's truthfulness of his claim of continuous unlawful residence in the United States during the statutory period.

It is noted that on page 2 of the report, under the section Pre-Test Interview, the applicant stated that the perceived conflict of [REDACTED]'s statement versus the date the applicant actually arrived were not in conflict. The applicant stated he met the affiant in 1987, but was already here since December 1980. However, the applicant's statement is not considered independent, objective

evidence with which to reconcile the affiant's inconsistent statement, and does not meet the applicant's burden of proof under 8 C.F.R. § 245a.2(d)(6).

The record also includes the following evidence.

1. An envelope addressed to the applicant in Delano, California, and dated-stamped in 1985. One envelope alone does not establish the applicant's presence during the requisite period.
2. A November 20, 1990, sworn and subscribed affidavit by [REDACTED], who stated that the applicant resided in Delano, California from March 1981 until August 1990. Although not required, the affidavit did not include any supporting documentation of the affiant's identity or presence in the United States. The affiant failed to indicate how he dated his acquaintance with the applicant or how frequently he saw the applicant. The absence of sufficiently detailed and consistent supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim.
3. A November 20, 1990, affidavit of employment by [REDACTED] who stated that the applicant worked for Dhillon Farms in Delano, California from March 1981 to August 1990, as a farm labor picking grapes, pruning, tipping, etc. The applicant was paid \$3.50 an hour. The employer 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).
4. A February 20, 2003, letter by the president of the Sikh Temple Riverside in Riverside, California, who stated that he has personally known the applicant since 1982 and that the applicant has been performing his prayers in the Sikh Temple since 1982. The affiant failed to show inclusive dates of membership; state the address where the applicant resided during membership period; and establish the origin of the information being attested to as required under 8 C.F.R. § 245a.2(d)(3)(v).

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 the duration of the requisite period.

Based on the above, the applicant has failed to overcome the director's basis for denying the instant application. 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.