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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

Office: NEW YORK

Date: **JUL 11 2008**

MSC 03 130 60642

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. 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, New York, New York, 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 for the requisite statutory time period.

On appeal, counsel asserts that the Citizenship and Immigration Services' (CIS) interviewing officer misunderstood the applicant's responses to certain questions in the interview conducted on April 2, 2004. Counsel requests that the application be approved.

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 period, 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).

The AAO has reviewed the totality of the record. The record contains the following documentation pertinent to the applicant's residence in the United States:

- An affidavit dated March 25, 2004 signed by [REDACTED] a United States citizen, who declares that he has known the applicant since February 1982, that he met the applicant at the Richmond Hill Sikh Temple, and that he has been friends with the applicant since then.
- A letter dated March 31, 2004 written on the letterhead of "The Sikh Cultural Society, Inc." in Richmond Hill, New York. The president of the organization, Harpreet Singh Toor, indicates that the applicant is a resident in Jamaica, New York and has been "visiting this Gurdwara (a Sikh Temple) on regular basis since early 1980s. He visits during week days as well as on weekends."
- A Form G-325A signed by the applicant on March 30, 2004 indicating that he lived in Van Nuys, California from October 1980 to August 1987 and lived in Jamaica, New York at different addresses from August 1987 to the date of the Form G-325A.
- An unsigned Form G-325A submitted in support of a September 20, 1999 Form I-485, filed on the basis of a spouse or parent's application for adjustment of status or approval of lawful permanent status in an immigrant visa category which allows derivative status for spouses and children. On the Form G-325A the applicant's address during the pertinent time period is listed as [REDACTED]t, Hoshiarpur, Punjab, India from October 1957 (the applicant's birth date) to October 1990. This same address is listed on the photocopy of the applicant's passport issued February 24, 1998.
- A Form I-687 signed by the applicant on September 21, 1990 indicating the applicant's address as in Van Nuys, California and indicating that the applicant belonged to a Sikh Temple in Fremont.
- A Form I-217, Information for Travel Document or Passport, prepared on August 3, 1993 that indicates the applicant attended S.D. College, Hishiarpur from 79-82; that his last permanent residence in country of citizenship is V&P Dagana Kalan, Hoshiar Pur, Punjab, India; and that his address in country of last foreign residence is [REDACTED] Brampton, Ontario, Canada from February 1993 to August 1993 as a refugee claimant.
- A Form I-213, Record of Deportable Alien, dated August 3, 1993. The Form I-213 sets forth the information obtained by the immigration officer at the time of intercepting the applicant attempting to enter the United States from Canada without inspection. The officer states: the applicant admitted to walking around the port of entry to avoid inspection because he knew he was ineligible to enter; that the applicant claimed to have lived in the United States since 1980 but later admitted to traveling to Canada and making trips to India to visit and get married; that the applicant is receiving \$348 per month from Canadian Public Assistance Authorities; and that the applicant requested a hearing before

an Immigration Judge because he claims to be in danger if he is returned to India, even though he does travel there regularly.

- A Form I-265 dated August 3, 1993 that indicates as a response to the question total time in U.S. is: Claims 2 occasions [sic] in US, Approx 10 yrs total."

In the Notice of Intent to Deny (NOID), dated March 10, 2006, the CIS officer referenced inconsistencies between information the applicant provided at his interview on April 2, 2004 and other information in the record. In an April 8, 2006 letter submitted in response to the NOID, the applicant stated that he often visited his friends in New York before he moved there in 1987 and that the interviewing officer misinterpreted his answers regarding an arrest.

On May 8, 2006, the director denied the application taking note of the applicant's response to the NOID, but determining that the applicant's response did not change the denial decision. On July 5, 2006, the director issued an amended decision determining that the applicant had indicated he was in S.D. College, Hishiarpur from 1979 to 1982 on the Form I-217 in the file. The director also noted that the applicant had been identified as having procured a Form I-688A, Employment Authorization Document through the payment of a bribe to an undercover officer participating in a large scale fraud investigation.

On appeal, the applicant states that the Form I-217 contains a typographical error regarding his presence at S.D. College Hishiarpur and that he attended the college from 1979 to 1980. The applicant points out that the Form I-213 [sic] also reflects his testimony that he had lived in the United States since 1980. The applicant claims that he did not pay a bribe to obtain the Form I-688A, but that he paid money as directed by a community leader as he did not understand English or the legal process. The applicant also asserts that the CIS immigration officer incorrectly recorded his answers to questions regarding an arrest and deportation, and that the applicant acknowledged he had been arrested and stated that he had not been deported.

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 beginning prior to January 1, 1982, through May 4, 1988.

The AAO has reviewed each document submitted to determine whether the applicant has submitted credible, consistent evidence that would establish by a preponderance of the evidence that the applicant has continuously resided in the United States for the requisite time period. The AAO finds no evidence establishing that the applicant entered the United States prior to January 1, 1982. The only information in the record referencing the applicant's possible entry into the United States prior to January 1, 1982 is: (1) the applicant's own statements in this regard; and (2) and a March 31, 2004 letter written on the letterhead of "The Sikh Cultural Society, Inc." in Richmond Hill, New York stating that the applicant had been coming to meeting on weekdays as well as weekends since the early 1980s.

The applicant's statements regarding his entry into the United States prior to January 1, 1982 are not substantiated by independent corroborating evidence. Moreover, the applicant has not provided a consistent accounting of his location from 1980 to May 4, 1988. The applicant indicates in various forms filed with CIS that he lived in California from 1980 to 1987, lived in California from 1980 to 1990, lived in India from 1957

to 1990, and attended college in India from 1979 to 1982. The AAO acknowledges the applicant's claim on appeal that he attended college in India from 1979 to 1980 and that the 1982 date is an error. In light of the applicant's other inconsistent statements, the AAO does not find this explanation credible. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The March 31, 2004 letter written on the letterhead of "The Sikh Cultural Society, Inc." organization in Richmond Hill, New York is not probative. The AAO observes that this letter does not contain an organizational seal, does not contain inclusive dates of the applicant's membership in the organization and does not establish the origin of the information the president of the organization is reporting as required by the regulation at 8 C.F.R. § 245a.2(d)(3)(v). In addition, this letter contradicts the applicant's numerous statements that he lived in California from 1980 to either 1987 or 1990 and belonged to a Sikh Temple in Fremont, California. The AAO acknowledges the applicant's statement that he visited New York many times, while living in California but finds this statement does not explain how the applicant could frequently visit the Richmond Hill, New York location on week days as well as weekends. Further, the letter does not establish that the applicant entered the United States prior to January 1, 1982 but only references the applicant's claimed attendance in the early 1980s.

The AAO has also reviewed the March 25, 2004 affidavit signed by [REDACTED] who declares that he has known the applicant since February 1982 after meeting the applicant at the Richmond Hill Sikh Temple. The AAO again notes that the affidavit does not establish that the applicant entered the United States prior to January 1, 1982 and that the applicant has repeatedly testified that he lived in California during the 1980s. The AAO again acknowledges the applicant's claim that he frequently visited New York but frequent visits to an area do not establish continuous residence. The AAO does not find this affidavit credible or sufficient to establish the applicant's entry into the United States prior to January 1, 1982 and continuous unlawful residence for the requisite time period.

Not only has the applicant not established that he entered the United States prior to January 1, 1982, he has not provided credible information corroborating his statements of continuous residence in the United States for the totality of the requisite time period.

Although the applicant has submitted an affidavit and a letter in support of his application, the applicant has not provided credible evidence of his physical presence in the United States for the requisite time period. As noted above, the applicant has submitted a letter and affidavit that conflict with statements he has made and his own statements contain inconsistencies. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence as well as the contradictory information contained in the record regarding the applicant's claimed residences 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 deficient 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.

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 for the duration of the requisite time period, 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.