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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

L2

FILE:

MSC 02 087 60734

Office: LOS ANGELES

Date: **MAY 23 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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

The applicant timely filed a Form I-290B, Notice of Appeal to the Administrative Appeals Unit, in which he stated that he is not satisfied with the decision denying his application as he feels there is a “compelling reason” to approve his application. The applicant indicated on the Form I-290B that a brief and/or additional evidence would be submitted within 30 days of filing the appeal. As of the date of this decision, however, more than 30 months after the appeal was filed, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act; 8 C.F.R. § 245a.11(b).

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 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 Citizenship and Immigration Services (CIS) 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. 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 a March 30, 1994, interview, the applicant stated that he first arrived in the United States in January 1981. On a Form I-687, Application for Status as a Temporary Resident, which he signed under penalty of perjury, the applicant stated that he lived at [REDACTED] in Fresno, California from October 8, 1985. The applicant did not identify any residences previous to that date. The applicant also stated that he worked as a farm laborer at [REDACTED] from 1987 to 1989. The applicant did not identify the location of the farm. In block 34 of the Form I-687 application, the applicant specifically denied affiliation with any church, club or other organization.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant submitted the following evidence:

1. A copy of a January 31, 1990, affidavit from [REDACTED] in which he stated that, to his personal knowledge, the applicant had lived in the United States from 1981 to 1988. The affiant did not state his relationship to the applicant or the basis of his knowledge of the applicant's residency.
2. A copy of a November 5, 2001, affidavit from [REDACTED] in which he stated that he met the applicant in New York, and that to his personal knowledge, the applicant had lived at [REDACTED] in Fresno from November 1981. This statement is inconsistent with that of the applicant on his Form I-687 application, in which he stated that he began living at [REDACTED] in 1985.
3. A copy of a February 7, 1990, affidavit from [REDACTED], in which he stated that, to his personal knowledge, the applicant had lived in the United States since 1982. The affiant did not state his relationship to the applicant or the basis of his knowledge of the applicant's residency. In an October 31, 2001, affidavit, however, [REDACTED] stated that he met the applicant in the Sikh temple in Fresno in 1985, and that to his personal knowledge, the applicant had lived at [REDACTED] in Fresno from February 1985.
4. A copy of a June 8, 1992, affidavit from [REDACTED], in which he stated that the applicant lived at [REDACTED] in Moreno Valley, California since January 1983. The applicant stated on his Form I-687 application, however, that he had lived at [REDACTED] in Fresno since 1985.
5. A copy of a November 5, 2001, affidavit from [REDACTED], in which he stated that he met the applicant in the community at Riverside and Fresno, and that to his personal knowledge, the applicant had lived at [REDACTED] in Fresno from June 1984. This statement is inconsistent with that of the applicant on his Form I-687 application, in which he stated that he began living at [REDACTED] in 1985.
6. A copy of a November 14, 2001, affidavit from [REDACTED] in which he stated that he met the applicant in the Sikh temple in San Joaquin, and that to his personal knowledge, the applicant had lived at [REDACTED] in Fresno since March 1986.
7. A copy of a February 7, 1990, affidavit from [REDACTED], in which he stated that, to his personal knowledge, the applicant had lived in the United States since 1987. The affiant did not state his relationship to the applicant or the basis of his knowledge of the applicant's residency.

8. A copy of a February 7, 1990, affidavit from [REDACTED], in which he stated that, to his personal knowledge, the applicant had lived in the United States since 1987. The affiant did not state his relationship to the applicant or the basis of his knowledge of the applicant's residency.
9. A January 31, 1990, affidavit from [REDACTED], who stated that he was the owner of [REDACTED] and that the applicant was currently working at his farm. [REDACTED] did not state when the applicant began working at the farm, but stated that he met the applicant at Buru Nanak Sikh Temple in San Joaquin in June 1987. In a November 13, 2001, affidavit, however, [REDACTED] stated that to his personal knowledge, the applicant had lived at [REDACTED] in Fresno from May 1982.

The applicant also submitted a January 31, 1990, affidavit from [REDACTED]; however, the affiant did not provide any information regarding the applicant's residency in the United States. The applicant also submitted other documentation, including copies of pay stubs, envelopes addressed to him in the United States, and bank statements. However, all of this documentation is dated after May 4, 1988, and therefore is not probative in establishing his continuous residency and presence in the United States during the required period.

During his 1996 deportation proceedings in which he requested asylum, the applicant stated that he first arrived in the United States on May 3, 1987. In her June 23, 2005, Notice of Intent to Deny, the director notified the applicant of this discrepancy in his statements. In response, the applicant stated that the statement that he entered the United States in May 1987 was, to his belief, "a clerical error," and that to the "best of his recollection" he entered the United States in January 1981. The applicant submitted copies of previously submitted documentation, including a copy of his Form I-687 application.

On appeal, the applicant submits the following additional documentation:

10. A copy of a September 14, 2005, affidavit from [REDACTED] in which she states that she met the applicant through her sister, and that to her personal knowledge he lived at [REDACTED] in Fresno from 1981 to March 1988, and at [REDACTED] in Long Beach, California from 1988 to 1990.
11. A copy of a September 14, 2005, affidavit from [REDACTED], in which she states that she met the applicant through her sister, and that to her personal knowledge he lived at [REDACTED] in Fresno from 1981 to March 1988, and at [REDACTED] in Long Beach, California from 1988 to 1990.
12. A copy of a September 21, 2005, affidavit from [REDACTED], in which he stated that he has known the applicant since 1985, and that to his personal knowledge the applicant lived at [REDACTED] in Fresno from 1985 to March 1988, and at [REDACTED] in Long Beach, California from 1988 to 1990.

During the application process for adjustment of status under the LIFE Act, the applicant stated that he entered the United States in January 1981. However, under oath during deportation proceedings, he stated that he first entered the United States in May 1987. The applicant dismisses his statement that he arrived in May 1987 as a "clerical error."

Additionally, the affidavits and statements submitted in support of his application contain contradictory information. For example, many of the statements indicate that the applicant lived on South West in Fresno beginning in 1981. However, the applicant stated on his Form I-687 application that he began

living at this address in 1985. Furthermore, the affiants differed on whether the applicant lived at [REDACTED] or [REDACTED]. Mr. [REDACTED] initially stated that he met the applicant in 1987 but later stated that he had personal knowledge of the applicant's residence in the United States since 1982.

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. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa application. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The applicant has failed to submit any competent objective evidence to explain the inconsistencies in his statements. Affidavits and statements from friends, even if they were not contradictory, do not constitute competent and objective evidence and do not meet the applicant's burden of proof. The applicant submitted no contemporaneous documentation to corroborate his presence and residency in the United States during the qualifying period.

Given the unresolved contradictions in the record and the absence of any contemporaneous documentation, 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.