

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



L2

FILE:



Office: MILWAUKEE

Date: **MAY 30 2008**

MSC 03 245 60818

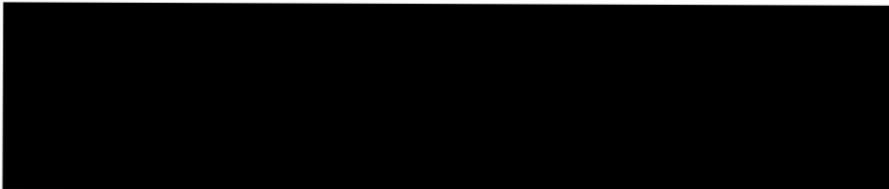
IN RE:

Applicant:



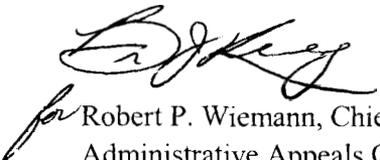
PETITION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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.


for 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 (director) in Milwaukee, Wisconsin. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he was continuously resident in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the documentation of record, supplemented by additional affidavit evidence, establishes the applicant's continuous residence and continuous physical presence in the United States during the requisite periods for LIFE legalization.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: “An alien shall be regarded as having resided continuously in the United States if *no single absence* from the United States has *exceeded forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(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. See 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 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 applicant, a native of India who claims to have lived in the United States continuously since May 1981, filed his application for permanent resident status under the LIFE Act (Form I-485) on June 2, 2003. At that time the only evidence in the record of the applicant’s residence in the United States during the 1980s was a series of affidavits, all prepared in June 1990, from the following individuals:

- [REDACTED], who stated that the applicant resided with him at [REDACTED] in Canoga Park, California, from May 1981 to August 1986, paying his rent in cash, and that he knew the applicant resided thereafter on [REDACTED] in North Hollywood, California, from September 1986 to the present.

- [REDACTED] who stated that the applicant had resided with him at 7760 [REDACTED] in North Hollywood, California, from September 1986 to the present, paying his rent in cash.

[REDACTED] (again), in his capacity as an official in the Sikh Temple of Los Angeles, stating that “I am informed that [the applicant] has been attending

the congregation in the Sikh Temple since 1981” and that he was currently involved in volunteer services.

- [REDACTED] (again), who stated that the applicant went to Vancouver, Canada, to visit with family members and returned to the United States in January 1988.
- [REDACTED], owner of [REDACTED] Precision Manufacturing Co., Inc. in Canoga Park, California, who stated that the applicant worked for him from May 1981 to August 1986 on a commission basis, and was paid in cash.
- [REDACTED] owner of C & R Market, who stated that the applicant worked in his store from October 1986 to the present, and was paid in cash.

In a Notice of Intent to Deny (NOID), dated February 22, 2006, the director indicated that the evidence of record failed to establish the applicant’s continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

On March 22, 2006, the director denied the application on the ground that the applicant had not responded to the NOID and therefore failed to establish his eligibility for legalization under section 1104(c)(2)(B) of the LIFE Act.

Counsel filed an appeal on April 21, 2006, later supplemented by an affidavit from the applicant, asserting that the applicant never received the NOID issued by the director on February 22, 2006, which accounted for his failure to respond with additional documentation. Counsel suggested that one of the applicant’s roommates may have mislaid the NOID, and asserted that the director’s decision should be reversed.

On April 23, 2008, the AAO sent copies of the NOID to counsel and the applicant, and granted an additional 30 days to submit further evidence. Counsel responded with a brief citing the previously submitted affidavits as good evidence of the applicant’s continuous residence in the United States during the statutory period of before January 1, 1982 through May 4, 1988, and submitting one additional affidavit, dated May 21, 2008 from [REDACTED]

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The record contains no contemporaneous documentation from the years 1981-1988 that demonstrates the applicant’s residence in the United States during that time. The only evidence of the applicant’s residence in the United States during the 1980s are the aforementioned affidavits, six of which were prepared in 1990 and one in 2008.

Three of the 1990 affidavits were prepared by the same person, [REDACTED], who claims to have lived with the applicant from May 1981 to August 1986 and to have been associated with him at a Sikh Temple in Los Angeles. The affiant provides curiously little information about the applicant in his affidavits – indicating merely that they lived together for five years, that the applicant paid his rent in cash, that the applicant took a trip to Vancouver in late 1987 and early 1988, and that the applicant was active in his temple. For someone who claims to have lived with the applicant for half a decade beginning in May 1981, the affiant's statement that "*I am informed* that [the applicant] has been attending the congregation since 1981" (emphasis added) is inexplicably vague. The affidavit from [REDACTED] who claims to have lived with the applicant from September 1986 to 1990, provides equally little information about the applicant.

As previously indicated, evidence must be evaluated not only by its quantity, but also by its quality. The affidavits referenced above are woefully short on substance, containing few details about the applicant's life in the United States and his relationship to the affiants during the 1980s. None of the affidavits was supported by documentation of the affiants' personal relationship to the applicant – such as photographs, letters, and the like – and none of them was supplemented by any documentation of the affiants' own identity and presence in the United States during the years 1981-1988. Accordingly, the foregoing affidavits are not persuasive evidence that the applicant was continuously resident in the United States in an unlawful status from May 1981 through May 4, 1988.

The last two of the 1990 affidavits are from business owners who state that the applicant worked for them from May 1981 to August 1986 and from October 1986 to June 1990. Neither of the affidavits comports with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i), however, because they do not identify the applicant's address during his time of employment, do not state the applicant's job duties, do not indicate whether the information was taken from company records, and do not indicate whether such records are accessible for review. The affidavit from the owner of the C & R Market does not even identify the market's business address. Thus, the employment affidavits have little evidentiary weight.

The final affidavit in the record is the new one prepared in 2008 by [REDACTED], a resident of Lansing, Michigan, who claims to have met the applicant in 1976 at a wedding reception in India. [REDACTED] states that the applicant notified him when he reached the United States in 1981, that he provided the applicant with financial help at that time, and that the applicant reciprocated by introducing [REDACTED] to a friend of his in New York when he first visited the United States in 1983. According to [REDACTED], he visited the applicant in California several times during the years 1983-1991, stayed in regular telephone contact during that time as well, and was told by the applicant in 1988 of his unsuccessful attempt to apply for legalization following a trip to Canada in December 1987.

Like the earlier affidavits from 1990, the current affidavit from [REDACTED] is not supported by any documentation of the affiant's personal relationship to the applicant – such as photographs, letters, and the like – during the 1980s. While the affiant has submitted a photocopy of his current passport, issued in 1999, he has not submitted any documentation of his presence in the United States during the 1980s, when he claims to have visited with the applicant in California. Nor has [REDACTED] provided any detailed information about the applicant's address at that time. Though he claims to know the applicant lived in California during the years 1981-1991, Mr. [REDACTED] has not identified any street name, or even a town, where the applicant resided during that decade. Furthermore, since the affiant did not enter the United States himself before 1983, he can hardly claim to have firsthand knowledge that the applicant maintained continuous residence in the United States, without any interruptions of more than 45 days, during the two years before then. For the reasons discussed above, the affidavit from [REDACTED] is not persuasive evidence that the applicant was continuously resident in the United States in an unlawful status from May 1981 through May 4, 1988.

Based on the foregoing analysis, the AAO concludes that the applicant has failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

The appeal will be dismissed, and the application denied.

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