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U.S. Citizenship
and Immigration
Services

L2

[Redacted]

FILE:

MSC 02 166 60046

Office: LOS ANGELES

Date: NOV 24 2008

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. 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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the 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 from before January 1, 1982, through May 4, 1988.

On appeal, counsel asserts that as the applicant's interview was conducted solely in English there was considerable confusion and misunderstanding. Counsel states that Citizenship and Immigration Services (CIS) should grant the applicant the opportunity to use a Punjabi interpreter to clarify his statements. Counsel provides affidavits from individuals who attested to having met the applicant in Alhambra, California in 1981 and to the applicant's visit to Canada in 1987 for three weeks.

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. Section 1104(c)(2)(B)(i) of the LIFE Act; 8 C.F.R. § 245a.11(b).

"Continuous residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

Continuous residence. An alien shall be regarded as having resided continuously in the United States if:

- (1) 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. [Emphasis added.]

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 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 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 during the requisite period. Here, the applicant has failed to meet this burden.

At the time of his initial interview on April 3, 1997, the applicant admitted in a sworn statement that he first arrived in the United States in 1987.

At the time of his LIFE interview on August 7, 2003, the applicant indicated that he departed to Canada by truck in 1987 and returned to the United States within a month.

At the time of his second LIFE interview on August 17, 2004, the applicant admitted in a sworn statement that he entered the United States in 1981 and stayed until 1987, then returned to Canada and remained there for six to seven months before returning to the United States in 1987.

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

- Affidavits from [REDACTED], who indicated that they have known the applicant since 1987 and 1988, respectively.
- Affidavits from [REDACTED] who attested to the applicant's absence from the United States from July 18, 1987 to August 10, 1987 and indicated that the applicant resided with him from July 1981 to February 1988 at [REDACTED] California and since February 1988 at [REDACTED]
- A letter dated August 1, 2004, from the president of [REDACTED] in Alhambra, California, who indicated that the applicant is a member of its organization and regularly attends religious services twice a week.

On February 21, 2007, the director issued a Notice of Intent to Deny, which advised the applicant of his testimony and sworn statements taken at the time of his interviews, that the affidavits submitted lacked pertinent information and the affidavits from [REDACTED] were inconsistent with his testimony. The applicant was also advised that his absence of 65 days from the United States exceeded the 45-day limit for a single absence from the United States during the requisite period.

The applicant, in response, asserted that he has been residing with [REDACTED] from July 1981 to February 1988 and he went to Canada in 1987 for approximately a month. The applicant asserted, "[a]ll this misunderstanding occurred because my poor skill to understand English." The applicant stated that at the time of his initial interview, the interviewing officer took his employment authorization card from him and became tensed, upset and worried. The applicant indicated that he was asked by the interviewing officer when did he enter the United States and "my English was not good according to my understanding I said 1987 I entered the United States I though [sic] he was asking come in and gone out from the U.S.A." The applicant stated that at the time of his August 17, 2004 interview, he informed the interviewing officer that he

went to Canada “maybe month six or seven I did not mean for six or seven months. This misunderstanding was created by my poor English. I did not understand [the interviewing officer’s] questions properly or maybe he did not understand my poor English.”

The director considered the applicant’s statement and noted that the applicant had passed the English literacy portion of the standardized citizenship test. The director concluded that the applicant’s statement did not overcome the grounds for denial and denied the application on March 23, 2007.

Counsel, in response to the Notice of Intent to Deny and on appeal, asserts that the applicant was not provided with copies of his sworn statement and, therefore, the applicant cannot adequately respond until the applicant and counsel have had a chance to review these statements.

Counsel, however, cites no statute or regulation that compels the director to provide the applicant with copies of his sworn statements without a request for a review of the Record of Proceeding or the filing of a Form G-639, Freedom of Information Act/Privacy Act Request. The regulation at 8 C.F.R. § 245a.20(a)(2) requires CIS to notify the applicant of its intent to deny the application when an adverse decision is proposed. The director did so in her notice of February 21, 2007.¹

Counsel asserts that no Punjabi interpreter was used at any of the applicant’s interviews.

Counsel’s assertion is without merit as it is not the CIS’s responsibility to provide the applicant with an interpreter. At each interview the applicant appeared without an interpreter and made no assertion for the need of one. If the applicant had felt uncomfortable without the presence of an interpreter, he could have requested that the interview be stopped and rescheduled.

An inference cannot be drawn that the information or documentation submitted is now accurate simply because the applicant recants his admission. Even in cases where the burden of proof is upon the government, such as in deportation proceedings, a previous sworn statement voluntarily made by an alien is admissible, and is not in violation of due process or fair hearing. *Matter of Pang*, 11 I&N Dec. 213 (BIA 1965).

In light of his sworn statements, the documentary evidence submitted by the applicant, in an attempt to establish continuous residence in the United States prior to 1987, cannot be considered as having any probative value or evidentiary weight.

The applicant has, therefore, failed to establish that he resided in *continuous* unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act and by the regulations, 8 C.F.R. §§ 245a.11(b) and 245a.15(c)(1). Given this, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

The AAO maintains plenary power to review each appeal 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*

¹ The regulation was amended so that effective June 18, 2007, the requirement of a Notice of Intent to Deny is no longer required.

Transp., NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The AAO does not view the affidavits discussed above as substantive enough to support a finding that the applicant continuously resided in the United States since before January 1, 1982, through May 4, 1988, as he has presented contradictory documents, which undermines his credibility.

On his Form I-687 application and in an affidavit both signed October 10, 1990, the applicant claimed to have been self-employed during the requisite period. The applicant, however, provided no evidence such as letters from individuals with whom he had done business as required under 8 C.F.R. § 245a.2(d)(3)(i). Furthermore, according to the interviewing officer's notes, at the time of his August 17, 2004 interview, the applicant indicated that he worked at a mechanic shop cleaning and moving cars from 1988 to 1990.

In response to the Notice of Intent to Deny, the applicant indicated that he resided with C [REDACTED] [REDACTED] from July 1981 to February 1988. However, according to the interviewing officer's notes, at the time of his August 17, 2004 interview, the applicant indicated that: 1) he resided with [REDACTED] from 1981 to 1984; 2) in 1984 he resided at the Sikh Temple for approximately three to four months; 3) in 1984/1985 he resided in a Sikh Temple in New Jersey for approximately two to three weeks and returned to Fresno, California; and 4) from 1985 to 1987 he resided with [REDACTED]

In addition, the applicant's response to the Notice of Intent to Deny and his testimony on August 17, 2004, contradict the affidavit of [REDACTED] who indicated that the applicant resided with him from July 1981 through August 16, 1990, the date the affidavit was signed.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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).

This information further undermines the credibility of the applicant's claim to have continuously resided in the United States since before January 1, 1982, through May 4, 1988.

Finally, it is noted for the record that on December 20, 1991, the applicant was charged with assault causing great bodily injury, a violation of section 245(a)(1) of the California Penal Code. On February 13, 1992, the charge was dismissed. Case no. [REDACTED]

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