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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[Redacted]

FILE:

[Redacted]

Office: NEW YORK

Date:

[Redacted] consolidated herein]

MSC 02 022 64952

NOV 28 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. 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.

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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant failed to establish that he entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel for the applicant submits a brief and additional documentation.

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 states 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 petitioner 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 the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.13(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's past employment should be on employer letterhead stationery, if the employer has such stationery, and 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 regulation at 8 C.F.R. § 245a.2(d)(3)(v), states that attestations from churches, unions, or other organizations should: 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 the membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

The applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under Section 1104 of the LIFE Act on October 22, 2001. In a Notice of Decision (NOD), dated June 27, 2007, the director denied the application. The director specifically noted that there were discrepancies in the information provided by the applicant that had not been adequately explained regarding his family members, correct name and date of birth, and residence in the United States throughout the requisite time period.

The applicant, through counsel, filed an appeal from the director's decision on July 26, 2007. On appeal, counsel asserts that the applicant has met his burden of proof by a preponderance of the evidence; the notice of denial is against the weight of credible evidence; the applicant submitted substantial corroborative evidence that is amenable to verification, that supports his claim that he entered the United States prior to January 1, 1982; and, any discrepancies as to the spelling of the applicant's name and dates of travel were fully explained.

The issue in this proceeding is whether the applicant has satisfactorily established that he continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

The record reflects that the applicant provided the following testimony and documentation in an effort to establish that he entered the United States prior to January 1, 1982, and resided in the United States continuously in unlawful status since that date through May 4, 1988:

Employment Letters: A letter from Harsh Bhardwaj stating that he employed the applicant as a house and yard cleaner from August 1981 to February 1982; a letter from [REDACTED] stating that he employed the applicant at Plaza Car Wash in North Hollywood, California from 1983 to May 1987; and, a letter from [REDACTED] stating that he employed the applicant at [REDACTED], as a part-time gas station attendant from October 1987 to December 1989.

The employment letters provided do not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that they fail to provide the applicant's address at the time of employment; identify the exact periods 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.

Letters/Affidavits/Information Regarding Residence and Absence: Letters from [REDACTED] stating that he had known the applicant since 1981, and that the applicant lived with him from August 1981 to January 1983; fill-in-the-blank affidavits and a letter from [REDACTED] stating that he met the applicant in 1982 at a Sikh temple in Los Angeles, California, and that he and the applicant lived in the same apartment on [REDACTED] in Los Angeles, California, from January 1983 to July 1985; and, a fill-in-the-blank affidavit from [REDACTED] stating that he and the applicant lived together on [REDACTED] from August 1985 to December 1989.

The record also contains a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), signed by the applicant on May 4, 1990, stating that he departed the United States for a trip to India due to an emergency (his mother was ill) from July 1987 to August 1987; a fill-in-the-blank affidavit from [REDACTED] stating that the applicant departed the United States from June 20, 1987, to August 5, 1987; and, a Form I-687, signed by the applicant on September 15, 1990, stating that he departed the United States for a trip to Canada to visit friends from May 16, 1987, to June 17, 1987.

It is also noted that on the Form I-687 signed in May 1990, the applicant noted his name as [REDACTED] that he had three brother and three sisters; and that he had resided at [REDACTED] in Los Angeles from 1981 to 1985 and at [REDACTED] 1985 to 1989. On the Form I-687 signed in September 1990, the applicant noted his name as [REDACTED] that he had two sisters; and that he resided at [REDACTED] from 1981 to 1983, at [REDACTED] from 1983 to 1985, and at [REDACTED] from 1985 to 1989.

Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on

the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

In an attempt to explain the above-noted discrepancies in his submissions the applicant stated in a letter dated June 19, 2007, that he is not well-educated and that due to a head injury his memory slips; that a religious priest told him that the name [REDACTED] was not lucky and that he should add his surname [REDACTED] to his name; and that any mistakes in previous submissions occurred due to negligence and typing errors. This attempt by the applicant to explain the discrepancies in the record is not supported by any independent objective evidence.

Letters and Affidavits from Acquaintances: An affidavit from [REDACTED] of Wilson, North Carolina, stating that he and the applicant had been friends since they first met in 1981 at the Hovannes Unocal gas station in North Hollywood, California; a letter from [REDACTED] stating that he first met the applicant at a Sikh temple in Los Angeles, California in 1982; a letter from [REDACTED] of Richmond Hill, New York, stating that the applicant came to his store on Liberty Avenue in Richmond Hill between 1987 and 1988 and that the applicant mentioned to him several times that he had arrived in the United States in 1981; and, a letter from [REDACTED] stating that he met the applicant at a Sikh temple in Los Angeles, California, in 1981 and they had seen each other at the temple regularly until 1990 when the applicant moved to New York.

Of the above letters/affidavits, only [REDACTED] personally attest to the applicant's presence in the United States prior to January 1, 1982. All of the affiants are generally vague as to how they date their acquaintances with the applicant, how often and under what circumstances they had contact with the applicant during the requisite period, and lack details that would lend credibility to their claims.

Other Documentation: A physician's letter stating that the applicant had been a patient in California in 1984, then moved to New York; a letter from [REDACTED]-president of Gurudwara Vermont in Los Angeles, California, stating that the applicant had been a member of the "community sangat" from 1981 to 1990; and, a letter from [REDACTED] president of the Sikh Cultural Society, Inc. in Richmond Hill, New York, stating that he first met the applicant in August 1982 in El Centro, California, and that when the applicant moved to New York in 1991, he met him at a Sikh temple in Richmond Hill.

The attestations from [REDACTED] do not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The letter from [REDACTED] not notarized and neither of the affiants state the address where the applicant resided during the membership period or establish the origin of the information being attested to. The letters are also devoid of details that would lend credibility to the affiants' claimed 25-plus year relationships with the applicant and provide no basis for concluding that the affiants actually had direct and personal knowledge of the events and circumstances of the applicant's residence in the United States throughout the requisite period.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, or automobile, contract, and insurance documentation, or tax receipts) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K). The documentation provided by the applicant consists of a physician's letter attesting to the applicant's presence in the United States in November 1984 and third-party affidavits ("other relevant documentation"). The affidavits lack specific details as to the affiants' knowledge of the applicant's entry into the United States and how the affiants knew the applicant – how often and under what circumstances they had contact with the applicant – during the requisite time period from 1982 through 1988. As such, the statements can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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, 591-92 (BIA 1988).

The AAO concludes that the applicant has not met his burden of proof. He has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

Beyond the decision of the director, the applicant has failed to submit proof of his identity pursuant to 8 C.F.R. §245a.2(d)(1).

It is further noted that the record reflects that the applicant was arrested on September 4, 1995, in Mineola, New York, for Driving While Intoxicated. On November 1, 1995, he was convicted upon a plea of guilty to Operating a Motor Vehicle Impaired by Alcohol, for which he received one-year conditional discharge, 90-days suspended license, and a fine of \$350.

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