

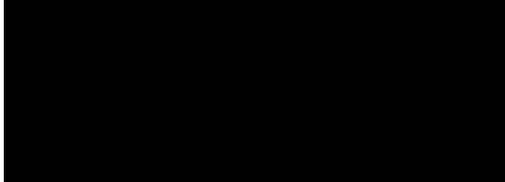
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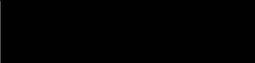
U.S. Citizenship
and Immigration
Services

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FILE:



Office: LOS ANGELES

Date: OCT 03 2008

MSC 01 354 61236

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:



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

The district 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 director noted an inconsistency in the applicant's testimony and application.

On appeal the applicant asks that CIS reconsider his application.

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. 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).

An applicant must establish eligibility by a preponderance of the evidence. 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 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.

Citizenship and Immigration Services (CIS) regulations provide an illustrative list of contemporaneous documents that an applicant may submit to establish presence during the required period. 8 C.F.R. § 245a.15(b)(1); see also 8 C.F.R. § 245a.2(d)(3)(vi)(L). Such evidence may include employment records, tax records, utility bills, school records, hospital or medical records, or attestations by churches, unions, or other organizations so long as certain information

is included. The regulations also permit the submission of affidavits and any other relevant document, but applications submitted with unverifiable documentation may be denied. Documentation that does not cover the required period is not relevant to a determination of the alien's presence during the required period and will not be considered or accorded any evidentiary weight in these proceedings.

On August 15, 2006, the director sent the applicant a Notice of Intent to Deny (NOID), which stated that the evidence submitted by the applicant was insufficiently probative of continuous unlawful residence in the U.S. from prior to January 1, 1982 through May 4, 1988, and continuous physical presence in the U.S. from November 6, 1986 through May 4, 1988.

The applicant did not respond.

On September 26, 2006, the director denied the application because the applicant had failed to establish his continuous unlawful presence during the required period.

On appeal the applicant asks that CIS reconsider his application. Relevant to the period in question the record contains the following evidence:

- (1) Statement, signed by [REDACTED] asserting he received a phone call from the applicant in 1980 and was visited by him in December of 1981 in Washington.
- (2) Statement, signed by [REDACTED] asserting that he heard sometime in 1980 that the applicant had moved to the United States, but did not actually see the applicant in the United States until 1984, after he himself moved to the U.S.
- (3) Statement, signed by [REDACTED], asserting he met the applicant in 1985 at the Guru Nanak Temple, in Buena Park, California.

As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation. The minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.12(e).

The applicant has submitted statements from three persons. There is no primary evidence in the record, and the entire record of proceeding consists of these three undetailed affidavits. Contrary to counsel's assertions, three affidavits is not sufficient to establish eligibility for LIFE Act legalization, and the case cited above, *Matter of E & M*, does not stand for the proposition that affidavits alone are always sufficient to establish eligibility. *Matter of E & M* provides guidance on the burden of proof for applicants in a LIFE Act legalization application. Nor is it appropriate for counsel to refer to an internal CIS memo, as internal memos have not undergone the notice and comment procedure necessary for promulgating regulation and thus do not constitute a source of authority. Moreover, the memo in question reiterates that "affidavits alone will not always be sufficient to support the applicant's claim." In *Matter of E & M* the applicant provided a copy of his I-94 card – an official U.S. government document verifying his entrance into the United States – here the applicant has not provided any such document, and the statements submitted by the applicant from these three persons are not sufficiently probative to establish eligibility.

Documents which generically assert an affiant has known an applicant since a particular year are not sufficiently probative to support assertions of eligibility. Even in a light most favorable to the applicant the three statements submitted do not cover the entire required period, and the paucity of their details raises suspicion as to their authenticity. In two of the statements the affiants reveal that they did not have actual personal knowledge of the applicant's arrival in the United States, but were merely told by third parties or 'heard' the applicant was in the United States.

Much of the 'story' created by the attestants relies on the presumption of facts and speculation by the CIS, as they are uncorroborated by documentation or other affidavits. As an example, the applicant who has asserted that he cannot remember where he entered the United States, asserts that he bounced around the United States from various job to job being paid 'under the table,' and yet the affiants above and the applicant variously assert throughout the record that the applicant would 'visit New York' for a day from California, or 'live in one place for only a few months at a time,' without ever detailing any mode of transportation (bus, private car, plane, etc.), manner of existence, or providing any evidence of such travels such as tickets or receipts, or even the ability to engage in such travel given the assertions of tenuous working opportunities. The applicant has not provided a single employment letter, no letters from doctors or hospital visits from over 20 years residing in the United States, no pictures of himself with the attestants, and no other documents which might corroborate any of the assertions of the applicant's life and activities in the United States for the last 25 years. This is particularly suspicious since one of the affiants claims that the applicant was married to his sister. The statements are so bereft of context and are so factually isolated that CIS cannot determine their authenticity. Thus, while the director's decision may have focused on the inability to verify what these particular affiants said, it is CIS' inability to verify the contents of the applicant's assertions and the affiant's testimony – i.e. the truth of the matter asserted therein – which undermines the applicant's assertions of eligibility.

As an example the applicant asserts he lived with his wife from 1985 or so, without any testimony from her, or any explanation as to how each of them moved from place to place, how and where they worked, or any other details about their lives. The general evasiveness of the applicant's testimony and the lack of any corroborating evidence – either by documentary evidence or by affidavit – raises doubts about the veracity of the applicant's assertions.

There are other inconsistencies and unexplained facts revealed by the record as well. On the applicant's G-325 Biographical Questionnaire, he asserts he was married in India in 1987 in India, and yet elsewhere he claims the reason he was front-desked by a CIS agent is because he traveled to Canada during the required period, failing to mention his trip to India to be married. It is unclear how the applicant could afford to travel to India, how the applicant traveled to India, or how or if the applicant's wife returned with him, or why, if his wife was with him in the United States as he asserted in a prior statement, they would travel back to India to get married. The applicant also asserts on his questionnaire that he lived in only two places since 1991. The applicant asserts in one statement that he found initial work as a dairy farmer for 3 or 4 months, yet during an interview he stated that he worked as a 'floor cleaner' for three or four years. In addition, the applicant admits that he was absent from the United States from 1987 to 1990. Given the applicant's admission during his February 12, 2002, interview that he was absent from

the United States for a significant portion of the required period, thus rendering him statutorily ineligible and in the very least breaking his chain of continuous unlawful residence, it is preposterous that counsel would assert that three weak affidavits are sufficient to establish the applicant's eligibility.

When viewed in its totality the record of proceeding does not give a clear picture of the applicant's life and activities during the required period such that his assertions of residence and presence are believable. Assertions of the affiants appear minimal in their detail and contextually isolated. Without this context CIS cannot determine with any confidence that the applicant was continuously present and unlawfully residing in the United States during the required period. An examination of the record establishes that the applicant probably did not arrive in the United States until sometime around 1991.

Accordingly, the applicant has not established the eligibility and the appeal will be dismissed.

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