

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

L2

PUBLIC COPY



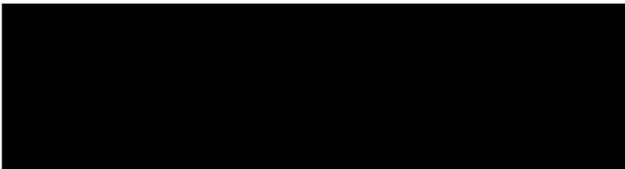
FILE: [REDACTED] Office: NEW YORK
[REDACTED] - consolidated herein]
MSC 02 113 62587

Date: **SEP 02 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:



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.

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

The district director denied the application because the applicant failed to demonstrate that she entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988.

On appeal, the applicant submits a brief statement.

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 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 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 record of proceedings contains the following information:

On December 14, 1990, the applicant and her son, [REDACTED] were admitted to the United States as non-immigrant visitors for pleasure (B-2) on a passport ([REDACTED]) issued to the applicant in Jalandhar, India, on June 1, 1990. The applicant subsequently reported that the passport was lost and obtained new passports at the Consulate General of India in New York on October 6, 1993 ([REDACTED]), and June 30, 2000 ([REDACTED]).

On May 14, 1991, the applicant was issued a Florida Identification Card showing her Social Security number as 139-90-9294.

Also on May 14, 1991, the applicant signed an application for class membership in a legalization class-action lawsuit and a Form I-687, Application for Status as a Temporary Resident. The applicant claimed to have first entered the United States in May 1981 by plane with a visitor's visa and to have departed the United States on only two occasions – from June to July 1982 (to attend her father's funeral), and from November to December 1990 (to attend her mother's funeral). On the Form I-687, the applicant indicated that she had been issued non-immigrant visitor (B-2) visas in New Delhi, India, in March 1981, June 1982, and 1990; did not list the names and/or dates of birth of any children; and noted she was a "housewife living with husband" in the United States since 1981 and her occupation was "sewing" (no employer's name and address was noted). The Form I-687 was denied on October 28, 2005.

On May 19, 1993, the applicant signed a Form G-325A, Biographic Information Sheet, indicating her address since December 1990 as [REDACTED] Astoria, New York, and that prior to December 1990, she resided at [REDACTED] Jalandhar, Punjab, India.

On January 21, 2002, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under the LIFE Act. On the Form I-485, the applicant indicated that she had a son, [REDACTED], who was born in India on January 8, 1982.

On February 18, 2004, the applicant was interviewed in connection with her Form I-485. At the time of interview, the applicant claimed to have initially entered the United States at the Toronto, Canada/U.S. border on May 15, 1981 with documentation provided by an unknown "agent."

In a Notice of Intent to Deny (NOID), dated August 31, 2005, the district director determined that the applicant had failed to demonstrate her continuous unlawful residence in the United States from prior to January 1, 1982, through May 4, 1988. The applicant was granted thirty days to respond to the notice.

In a response to the NOID, received on August 7, 2005, the applicant provided a letter stating that her Form I-687 contained errors, and that she initially entered the United States in May 1981 by car without inspection at the Canadian border, and departed the United States via the Canadian border on January 2, 1982, in order to travel from Canada to India to see her father who was sick. She stated that after she arrived in India, her "father had expired" and she gave birth to her son, after which she again reentered the United States on February 15, 1982, via the Toronto, Canada/U.S. border.

In a Notice of Decision (NOD), dated January 12, 2006, the district director denied the application based on the reasons stated in the NOID.

The applicant filed the current appeal from the district director's decision on February 10, 2006. On appeal, the applicant claims that the district director's denial fails to accurately apply the preponderance of evidence standard, contains material factual errors, and is arbitrary and capricious. At the time of filing the appeal, the applicant requested a copy of the record of proceeding (ROP), and stated that she reserved the right to add additional issues on appeal after receiving the ROP – which, the record reflects, was responded to on September 12, 2007. To date, no additional evidence has been received in support of the appeal; therefore, the record is considered complete.

The issue in the proceeding is whether the applicant has established, by a preponderance of the evidence, that she entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988.

The record reflects that, in support of her Form I-485, the applicant submitted the following documentation in an attempt to establish her unlawful residence in the United States during the requisite time period:

1. A letter, dated February 11, 2002, from [REDACTED] of Flushing, New York, stating, in part, that he has known the applicant and her family since 1982, and that the applicant used to take care of his son (after his son's birth in June 1983).
2. A letter, dated January 18, 2004, from [REDACTED] General Secretary of The Sikh Cultural Society, Inc., Richmond Hill, New York, stating, in part, that he knows the applicant's husband and his family, and that "they have been helping out in the kitchen of our Gurdwara (holy temple) since 1981/1982."
3. An affidavit, notarized on January 13, 2004, from [REDACTED] of Princeton, New Jersey, stating, in part, that he personally knows the applicant has resided in the United States "during the years 1981 and 2003," because the applicant lived with him in

Elmhurst, New York, “during the year 1981.” There is no indication in the record that the applicant ever claimed to have resided at [REDACTED]’s address.

4. A letter, notarized on February 16, 2004, from [REDACTED] of Jackson Heights, New York, stating, in part, that the applicant has been a personal friend since 1980, and that he knows the applicant’s spouse resided in the United States “during the years between 1981 and 1987.”
5. An affidavit, dated February 17, 2004, from [REDACTED] of Long Island City, New York, stating, in part, that she has known the applicant as a personal friend since August 1981, and that the applicant resided in the United States from August 1981 to 2004.
6. An affidavit, dated June 8, 2005, from [REDACTED], stating, in part, that the applicant and her husband stayed with him at his residence at [REDACTED] Flushing, New York, from May 1st to May 15th 1981. However, as noted above, the applicant claims that she did not initially enter the United States until May 15, 1981.
7. An undated letter from [REDACTED] of East Elmhurst, New York, stating, in part, that the applicant, a close friend for 20 years, has been a resident of the United States since 1981.
8. A handwritten receipt, dated January 8, 1987, issued to the applicant by [REDACTED] Jewelers, Jackson Heights, New York.
9. An envelope mailed to the applicant in the United States, postmarked November 23, 1981.

The applicant also provided documentation relating to her husband, [REDACTED] (including a letter from Bangal Travel Services in Richmond Hill, New York, stating that he was employed from June to September 1981; and, receipts issued to him, dated December 1981 and November 1986), and her son (including a physician’s letter stating that the son had been seen for treatment in New York in 1985, 1986, 1987, 1988, 1995, 1997, and 2002; and, a letter, notarized on February 13, 2004, from [REDACTED] of Astoria, New York, stating that he had been friends with the son since 1986).

There are discrepancies noted in the forms submitted by the applicant, her testimony, and the documentation provided, regarding the applicant’s date and manner of initial entry into the United States, her absences from the United States, and her claimed continuous unlawful residence in the United States from her claimed date of initial entry until May 4, 1988.

As noted above, the applicant claimed on her Form I-687, and relating documents, to have initially entered the United States by plane with a visitor’s visa in May 1981, and to have departed the United States on only two occasions (during June/July 1982, and November/December 1990). She later

claimed to have entered the United States without inspection on the Canada/U.S. border. While she claimed on her Form I-687 to have departed the United States in June to attend her father's funeral, she stated in response to the NOID, that she had traveled to India in January 1982 and that her father "had expired" during that trip. She did not indicate on the Form I-687 that she had a child, but subsequently explained that, while one week away from giving birth to her son, she had traveled to India due to her father's illness and reentered the United States less than six weeks later.

Furthermore, as previously discussed, in May 1993, the applicant signed a Form G-325A indicating that prior to December 1990, she resided at [REDACTED], Jalandhar, Punjab, India.

It is also unclear as to how the applicant and her son entered the United States after his birth in 1982. Although it appears that the applicant's son was physically present in the United States from in or about 1985 through 1988, and was listed on the applicant's passport issued in India 1990, there is no information contained in the record as to how he entered the United States after his birth and prior to 1985.

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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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 application. *Id.*

Furthermore, none of the above-noted affiants in Nos. 1 through 7, above, attest to their specific knowledge of the applicant's alleged entry into the United States on May 15, 1981, are generally vague as to how they date their acquaintances with the applicant - how often and/or under what circumstances they had contact with the applicant during the relevant period - and provide few details that would lend credibility to their claims.

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).

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 credible school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv). 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)

according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (I) and (K). The documentation provided by the applicant consists solely of third-party affidavits (“other relevant documentation”) that are either of minimal probative value or inconsistent with the applicant’s own testimony.

Given the lack of documentation and the inconsistencies noted in the record, it is concluded that the applicant has failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982, and maintained continuous unlawful residence since such date through May 4, 1988, as required for eligibility for adjustment of status to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, she 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.