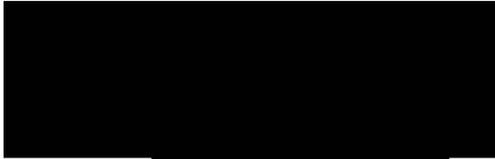




U.S. Citizenship
and Immigration
Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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FILE:



Office: NEW YORK Date:

SEP 02 2008

MSC 02 250 60974

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, 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 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.

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.

The applicant has submitted documentary evidence which establishes that he was probably residing unlawfully in the United States from 1992 to the present. The period in question is the required period, for which very little evidence has been submitted.

On March 5, 2007, 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 April 11, 2007, 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) An affidavit signed by [REDACTED] asserting he has had a long friendship with the applicant since 1981 to the present (April 18th, 2004).
- (2) Document labeled The Sikh Cultural Society, Inc., asserting that the applicant regularly visited the Sikh temple in 1982 and 1983.
- (3) A document signed by [REDACTED] asserting the applicant has lived in the United States since 1981.

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).

Documents which generically assert an affiant has known an applicant since a particular year are not sufficiently probative to support assertions of eligibility. In this case the generic nature of the documents provided fail to even support the applicant's assertions of residence or acquaintance with the affiants. They fail to describe the nature of the relationship – such as how the applicant and affiant might remain such 'close friends' when the applicant lived in Seattle and the affiant in New York without evidence of travel or phone conversations (affidavit at No. 1 above). The document at No. 3 above is unclear in its assertions, stating that the affiant and applicant are from the same village in India and became reacquainted after a phone conversation in 1983. The documents submitted are not sufficiently probative to support the applicant's assertions of his residence and employment for the required period (which covers a span of 18 years up to the passage of the LIFE Act in 2000), much less his eligibility for LIFE Act legalization. The applicant claims to have resided in one place and worked at one employer for the duration of the

required period, and yet cannot provide a single contemporaneous document or other evidence to support his claim such as pay stubs, cashed checks, receipts, W-2 or other tax forms, an employer letter, bank account activity statements or any other corroborating evidence.

It is reasonable to expect that some form of supporting evidence could be submitted for six years of the required period. It is important to note what evidence is not in the record given the applicant's assertions, such as utility bills, envelopes or advertisements mailed to the applicant, medical records, pay stubs, travel documents such as I-94s or passports, state identifications and registrations such as licenses, insurance or property taxes, evidence of means of transportations such as train tickets, car titles, or taxi cab receipts. No such evidence has been submitted. When viewed in an aggregate context the record does not support eligibility.

The evidence submitted is not extensive, and the weight of the evidence that has been submitted is not sufficiently probative to establish the applicant entered the United States prior to January 1, 1982, and resided unlawfully through May 4, 1988.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for LIFE Act legalization has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 245a of the Act. The applicant has failed to meet this burden.

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