



U.S. Citizenship  
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Services

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**SEP 10 2008**

FILE:   
MSC 02 099 60712

Office: DENVER (SALT LAKE CITY, UT) Date:

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:** On March 14, 2007, the District Director, Denver, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant failed to establish his entry into the United States prior to January 1, 1982, and his continuous residence in an unlawful status in the United States during the statutory period. In a Notice of Intent to Deny dated September 30, 2005, the director noted that the applicant claimed to have entered the United States without inspection in about January 1981, and that the applicant claimed not to have left the United States until July of 1987. The director found that the applicant's first child was born on August 1, 1981, and concluded that the applicant must have been in India on or about November 1980. The director noted that the applicant's second child was born on October 8, 1989, which meant that the applicant had to have been in India in about January 1989. The director found that the other evidence the applicant submitted was self-serving and is not backed up by any other supporting documentation. In response to the NOID counsel for the applicant asserted that the applicant did not testify as the director stated. Counsel asserted that the applicant stated at his interview that he first entered the United States in December 1981 and left the United States on December 2, 1988, and that he is willing to take a lie-detector test if USCIS would be willing to administer one. Counsel asserted that the applicant's personal circumstances during the statutory period lend credibility to the quantity and quality of the evidence he submitted. Counsel asserted that the applicant is illiterate, entered the United States without documentation in December 1980, and worked for cash at a farm from early 1981 to December 1987.

On appeal, counsel asserts that the applicant initially entered the United States in December 1980 without inspection. Counsel asserts that due to his personal circumstances, the applicant had significant difficulties obtaining evidence of his presence in the United States from early 1981 to December 1987.

An applicant for permanent resident status under section 1104 of the LIFE Act 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. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite period, 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 or 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 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 that fill-in-the-blank affidavits providing generic information.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of establishing by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true. Upon examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

The record reflects than on January 7, 2002, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On August 16, 2004, the applicant appeared for an interview based on the application.

The applicant has provided the following evidence relating to the requisite period:

Letters and affidavits

- An “Affidavit of Residency” form sworn to on January 6, 1990, by [REDACTED]. Mr. [REDACTED] states that he has personal knowledge that the applicant resided at [REDACTED] at [REDACTED] Caruthers, California from February 1981 to December 1987. Mr. [REDACTED] added that he is able to determine the beginning of his acquaintance with the applicant because “he lived on [REDACTED] in my house without paying any rent, during working period.” This letter can be given little

evidentiary weight because it lacks sufficient detail and information required by the regulations. Specifically, [REDACTED] failed to provide the applicant's address at the time of his employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, he also failed to declare which records his information was taken from, to identify the location of such records, and to state whether such records are accessible, or, in the alternative, state the reason why such records are unavailable. In addition, the letter did not list the applicant's position or his duties on the farm.

- Three "Declaration of Witness" forms, dated in September 2004. The forms, signed by [REDACTED], and [REDACTED], indicate that the affiant knows and is acquainted with the applicant. The form language states that the affiant has "personal knowledge that the applicant has resided in the United States as follows:" then provides blanks for the addresses where the applicant has presumably resided and the date he or she has resided there. All three affiants left these blanks empty. The form allows the affiant to fill in a statement that he or she "is able to determine the date of the beginning of his or her acquaintance with the applicant in the United States from the following fact(s): \_\_\_\_." All three affiants simply added that they met the applicant at the Sikh Temple in Stockton, California. [REDACTED] stated that he first met the applicant in Nov. 1982, [REDACTED] in January 1984, and [REDACTED] in March 1986. The affiants do not claim personal knowledge of the applicant's arrival in the United States, and they all fail to indicate any personal knowledge of or to provide any details regarding the circumstances of his residence. None of them explain how they specifically recall the date when they first met the applicant. Thus, these statements can be given minimal evidentiary weight of the applicant's continuous residence and continuous physical presence during the statutory periods.

For the reasons noted above, these letters and affidavits can be given little evidentiary weight and are of little probative value as evidence of the applicant's residence and presence in the United States for the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. Furthermore, while the applicant has submitted numerous affidavits in support of his application, he has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period.

The record of proceedings contains other documents, including letters from employers [REDACTED] and [REDACTED], and [REDACTED] a Social Security Statement indicating earning from 1989 through 2003, and various Internal Revenue Service (IRS) Forms 1040, Individual Tax Return and Forms W-2, Wage and Tax Statements from 1990 through 2004. These documents all indicate physical presence after May 4, 1988, and do not address the

applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have first entered the United States without inspection in January 1981, and to have resided for the duration of the requisite period in California and Utah. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence he entered into the United States before January 1, 1982, and that he resided continuously in an unlawful status for the requisite period.

The absence of sufficiently detailed and probative documentation to corroborate the applicant's claim of entry and continuous residence for the entire requisite period, detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance on affidavits alone, which lack relevant details, and the lack of any probative evidence of his entry and residence in the United States from prior to January 1, 1982 through May 4, 1988, the applicant has failed to establish by a preponderance of the evidence that he maintained continuous, unlawful residence in the United States as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.