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FILE:   
MSC-02-141-66010

Office: SAN FRANCISCO (FRESNO)

Date: **SEP 22 2008**

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, Director  
Administrative Appeals Office

**DISCUSSION:** The application for Permanent Resident Status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, San Francisco District Office, and is now before the Administrative Appeals Office (AAO) on appeal. The applicant filed an appeal, which the director of the National Benefits Center rejected. The AAO will withdraw the decision of the director of the National Benefits Center based on the director's lack of jurisdiction over the matter. *See* 8 C.F.R. § 103.3(a)(2)(iv). The matter is now before the Administrative Appeals Office (AAO) for review. Upon review of the matter, the appeal will be dismissed.

The director of the San Francisco District Office determined that the applicant failed to meet his burden of establishing that he entered the United States before January 1, 1982 which applicants for adjustment of status to that of Permanent Residents must do pursuant to 8 C.F.R. § 245a.11(b) to be eligible for this benefit. Specifically, the director noted the applicant's Form I-589 Application for Asylum in the United States and his Form G-325A Biographic Information which were both submitted on July 19, 1985. These forms state that the applicant resided in Punjab, India until March 1982. The director also noted that the applicant provided details regarding living conditions in India from 1980 until March 1982 during his asylum hearing. The director determined that the evidence in the record indicated that the applicant first entered the United States on May 21, 1982, when he entered through the port at Galveston, Texas as a seaman. The director noted this and other inconsistencies in the record regarding the applicant's residence in the United States during the requisite period. The director stated that these inconsistencies caused the applicant to fail to establish that he entered the United States before January 1, 1982 and then resided continuously in the United States in an unlawful status since that date and through May 4, 1988. Therefore, the director denied the application.

On appeal, the applicant submits a brief dated March 5, 2007. In it, the applicant states that he was in the United States from July 1981 until May 1982, at which time he went to India to see his son who was born on [REDACTED]. He asserts that this absence both began and ended in May 1982. He states that he provided detailed information regarding living conditions in India from 1980 until 1982 because he regularly spoke with relatives who remained in India. He states that though he did enter the United States through Thailand as a seaman, this was his second entry in May of 1982. He also states that he previously used the name of [REDACTED].

The director of the National Benefits Center subsequently rejected the appeal to this decision based on 8 C.F.R. § 103.3(a)(2)(v)(B)(1), which states that an appeal that is not filed within the time allowed must be rejected as improperly filed. In saying this, the director stated that he found that the director's notice of decision was issued on February 14, 2007 and the Service did not receive his appeal until March 29, 2007.

However, the regulation at 8 C.F.R. § 103.3(a)(2)(iv) states that if the reviewing official will not be taking favorable action or decides favorable action is not warranted, that official shall promptly forward the appeal and the related record of the proceeding to the AA[O] in Washington, D.C.

Therefore, the director's rejection of the appeal was invalid and must be withdrawn, as jurisdiction with regard to the appeal remains with the AAO, not with the director of the National Benefits Center. After reviewing the record, it appears that the Notice of Decision was issued on February 14, 2007 and the applicant's appeal of that decision was first received on March 6, 2007 in Fresno, California. The director's decision indicated that additional evidence should be sent to the Fresno, California office. Therefore, the AAO finds that because the applicant submitted his appeal and additional evidence, as instructed, to the Fresno, California office timely, the applicant's appeal was received timely by Citizenship and Immigration Services (CIS).

Accordingly, the AAO hereby withdraws the rejection of the applicant's appeal by the director of the National Benefits Center.

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 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 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing both that he first entered the United States prior to January 1, 1982 and that he then maintained continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on January 8, 2006. At part #4 of this application, the applicant indicated that in addition to his complete name, [REDACTED] he had also used the names [REDACTED]. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed his addresses in the United States during the requisite period to be: [REDACTED] from September 1981 to November 1982; [REDACTED], California from November 1982 to August 1985; [REDACTED] in Bakersfield, California from August 1985 to December 1985; [REDACTED] from December 1985 to May 1986; and [REDACTED] from May 1987 to September 1990. At part #31 where the applicant was asked to list all organizations and churches that he was affiliated with, he indicated that during the requisite period, he was affiliated with [REDACTED] in Bakersfield from November 1985 until October 1990. It is noted that the applicant also indicated that he was affiliated with other Sikh associations in India prior to the requisite period and with a Sikh Temple in Bakersfield after the requisite period ended. At part #32 where the applicant was asked to list all of his absences from the United States since he first entered, he indicated that he was absent from the United States three times during the requisite period. He states that he was absent during the month of May in 1982; from January to February in 1986; and then during the month of July in 1987. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he showed his employment in the United States during the requisite period to be: as a farm laborer for [REDACTED] Farms in Chowchilla, California from September 1981 until November 1982; as a cashier at a 7-eleven store in Long Beach, California from November 1982 until June 1985; at a Burger King in Bakersfield, California from September 1985 until January 1986; and as an ice cream vendor in Bakersfield from June 1986 until July 1990.

The record contains a second Form I-687 submitted in 1990 to establish class membership. At part #4 of this Form I-687 the applicant indicated that he had used one name other than his full name. He stated that this name was [REDACTED]. At part #33 of this Form I-687, where the applicant was asked to list his addresses of residence since he first entered, he indicated that he first began residing in the United States in December 1982 when he resided on Pine Avenue in

Long Beach. Other addresses of residence and dates associated with those addresses are generally consistent with those on his subsequently filed Form I-687. At part #35 of this Form I-687 application, the applicant indicated that he was absent from the United States twice during the requisite period: from January 1986 until March of that year when he went to visit his family because his father was ill and passed away; and for an unspecified length of time in 1987 when he went to India to visit his parents. At part #36 of this Form I-687, the applicant indicated that he worked: at Gill Farms in Chowchilla, California from September 1981 until November 1982; for a 7-eleven from December 1982 until May 1985; for two different Burger King restaurants from July 1985 until June 1986; and as an ice cream vendor from June 1986 until July 1987. He did not indicate what his employment was from July 1987 until July 1990. It is noted that though the applicant did not indicate an address of residence in the United States until December 1982, he did indicate that he was employed in the United States since September 1981.

The record contains evidence that the applicant was arrested on January 10, 1985 at a 7-eleven Store at [REDACTED] California. Subsequent to this, the applicant was issued a Form I-265 Application for Order to Show Cause for Bond/Custody Processing Sheet. This Form I-265 indicates that on January 11, 1985 it was determined that the applicant entered the United States in Galveston, Texas on an unknown date in June 1982. The record shows that the applicant voluntarily departed the United States on January 21, 1986. It is noted that the applicant did indicate that he was absent in January to either February or March in 1986 on his Form I-687 applications. However, he indicated that the purpose of this absence was to visit family in India.

On an Interview Information Sheet from the Deportation Branch dated January 7, 1986, the applicant indicated he entered the United States in June 1982 and that the date of his first employment in the United States was in July 1982.

The record contains a Form I-589 Request for Asylum in the United States that the applicant submitted on July 19, 1985. On this form, the applicant indicated that he departed from India in March of 1982 by boat and arrived in the United States on May 21, 1982. Part # 22 of this Form indicates that the applicant's son, [REDACTED] was born on November 15, 1982. It is noted that this indicates that the information on this form regarding either the applicant's date of first entry into the United States or his absence from the United States in 1982 is not consistent with what he showed on his Form I-687.

The record also contains a Form G-325A Biographic Information signed by the applicant on July 18, 1985. On this Form G-325A, the applicant indicates that he lived continuously in the Punjab Province of India from 1951 until February 1982. The first address he lists in the United States is in Fresno, California, where he indicates he began residing in May 1982. He further shows that he worked as a crewman on a vessel in Galveston, Texas from March 1982 until May 1982 and that he then began agricultural work in an unspecified location from June until November 1982. It is noted that on this Form G-325A the applicant did not represent either his employment or his

addresses of residence consistently with what he indicated on his Form I-687. This casts doubt on whether the applicant accurately represented his date of first entry into the United States, his employment and his addresses of residence to Citizenship and Immigration Services (CIS) on his Form I-687.

The record further contains a form on which the United States Embassy in New Delhi indicated that the applicant appeared in person at the Immigration and Naturalization office located in the American Embassy in New Delhi, India on September 9, 1988. The officer who completed this form indicated that the applicant presented a document to the officer at that time and attempted to apply for adjustment of status on that date. This indicates that the applicant was outside the United States in September 1988.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.12(e). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.12(f).

Evidence in the record that is relevant to the applicant's claim that he maintained continuous residence in the United States for the duration of the requisite period includes the following:

- Photocopies of both a California State Driver's License a California State Identification Card. Both documents indicate they were issued to the applicant on May 26, 1983.
- Photocopies of road test score sheets that show that the applicant took road tests in Long Beach, California on May 2, 1984, May 11, 1984 and May 21, 1984.
- A Department of Motor Vehicles record that indicates the applicant was issued a California Identification Card on July 28, 1983 and a Driver's License on May 21, 1985. These records also show that the applicant changed his address on file in December 1985.
- Photocopies of pay stubs issued to the applicant: by 7-eleven for periods ending on December 19, 1982, December 26, 1982 and December 23, 1983 and December 30, 1984 by Burger King for periods ending on November 25, 1985, November 30, 1985, December 15, 1985 and December 31, 1985; and by an unstated employer for periods ending January 15 and January 31, 1986.
- A letter from Washington Mutual Bank that is dated April 24, 2003. This letter indicates that the applicant opened a bank account on September 29, 1983.
- A letter from the Great Western Bank in Bakersfield, California that is dated August 22, 1990. This letter indicates that the applicant opened a bank account on September 29, 1983.

- A photocopy of a passbook from the applicant's Great Western Bank Account that shows that the applicant made transactions beginning on March 24, 1986 and that he continued to have transactions until the end of the requisite period.
- A Credit Card Service Bureau card issued to the applicant on an unknown date and effective through September 1986.
- A photocopy of an Ambulatory Care Services Patient Financial Services card that indicates that it was issued to the applicant. The date December 19, 1985 has been written on this photocopy. On the same page with this photocopy is a photocopy of another form that indicates that an unnamed individual had appointments on February 27, 1986.
- A photocopy of an envelope addressed to the applicant in Long Beach, California that is date stamped December 22, 1983.
- Pay stubs from [REDACTED] Labor Contractor that are dated November 2, 1981 and July 2, 1982. It is noted that the name that appears on the November 2, 1981 pay stub is "Malkit" and the name that appears on the November 1982 pay stub is not legible. A note on the photocopy indicates that Malkit is an alias name used by the applicant.
- Pay stubs from [REDACTED] issued to the applicant on September 12, 1982 and November 6, 1982 and a pay stub that does not show who it was issued to for the period ending August 12, 1982.
- A pay stub from Mahil Farms issued to [REDACTED] on June 13, 1982. A note on the photocopy indicates that [REDACTED] is an alias used by the applicant. However, the applicant has not submitted evidence that proves that he has used this name. Therefore, this document cannot clearly be associated with the applicant.
- A photocopy of a receipt for registered mail sent by the applicant in August 1982 and a second photocopy of a receipt for registered mail sent by [REDACTED] on November 19, 1982. The applicant has not submitted evidence that proves that he has used this name. Therefore, this document cannot clearly be associated with the applicant.
- An affidavit from the Bakersfield Sikh Temple that was notarized on January 25, 2002 and is signed by [REDACTED]. The affiant states that he first met the applicant in India in 1970. He states that he also saw the applicant in 1981 when he began to reside in the United States. He further states that the applicant moved to Bakersfield in 1985.
- An affidavit from [REDACTED] that was notarized on January 29, 2002. The

affiant states that he met the applicant when he was working for Gill Farms in December 1981. He states that he and the applicant see each other constantly. However, he does not state the frequency with which they saw each other during the requisite period. He does not indicate whether there were periods of time during the requisite period when he did not see the applicant.

An affidavit from [REDACTED] that was notarized on August 27, 1990. The affiant states that he has known the applicant since 1981 when the applicant first came to the United States. He asserts that the applicant has worked in the United States since he arrived in July 1981. He states that the applicant went to India in July 1987 and returned in August of that year.

- Forms W-2 Wage and Tax Statement for 1985 and 1986 issued to the applicant. It is noted that the last name shown on these documents is spelled, [REDACTED]
- A photocopy of a check issued to [REDACTED] in Chowchilla, California. This check is dated November 6, 1982.
- A declaration from the applicant that is dated April 19, 2006. The applicant states that he has resided in the United States continuously since 1981 and requests a favorable determination regarding his application.

An affidavit from [REDACTED] that was notarized on April 19, 2006. The affiant submits photocopies of the identity page of his United States passport and of his California Driver's License with his affidavit. He states that he met the applicant at [REDACTED] Farm in November 1981. He states that they became friends at that time and that they met frequently since that time. However, he fails to indicate whether there were periods of time during the requisite period when he did not see the applicant. The affiant states that he drove the applicant to the airport in January 1986 when the applicant voluntarily departed the United States. He states that the applicant returned to the United States one month after departing and began working in Bakersfield again.

- An affidavit from [REDACTED] that was notarized on April 15, 2006. The affiant submits a photocopy of his California Driver's License and the identity page of his United States passport with his affidavit. The affiant states that he know that the applicant has resided in the United States since prior to January 1, 1982 and for the duration of the requisite period. He states that the applicant had an absence from January to March 1986. He states that he knows date he met the applicant because he met him at a religious function at Chowchilla Gill Farm.
- An affidavit from [REDACTED] that was notarized on April 17, 2006. The affiant submits a photocopy of his California Driver's License and his Certificate of

Naturalization that was issued to him on August 18, 1981. The affiant states that he has known the applicant since 1970. He states that the applicant entered the United States in July 1981. He states that he has kept in contact with the applicant since that time and that he applicant has traveled back to India three to four times since he first entered.

The director denied the application on February 14, 2007. In his decision, the director stated that the record contained inconsistent evidence regarding when the applicant first entered the United States. Specifically, the director noted that applicant's Form I-589 Application for Asylum in the United States and Form G-325A, Biographic Information, submitted on July 19, 1985 indicated that the applicant first entered the United States subsequent to January 1, 1982. Specifically, they indicate that the applicant resided in the Punjab region of India from his date of birth until March 1982. The documents indicate that the applicant left India for Thailand in March 1982 as a seaman, stayed in Thailand for one month, traveled to Venezuela and then entered the United States at the port in Galveston Texas on May 21, 1982. The director also noted that the applicant provided the former INS with detailed information regarding living conditions in India from 1980 until March 1982 and that the applicant stated on his Form I-589 that his son was born on [REDACTED] indicating that the applicant would have needed to be present for this son's conception in early 1982. The director stated this and other previously noted discrepancies caused the applicant to fail to satisfy his burden of proof.

On appeal, the applicant asserts he first entered the United States in July 1981 but that he was briefly absent from the United States during the month of May in 1982 when he returned to India to see his newborn son, who was actually born on [REDACTED] rather than on that date in 1982. He goes on to state that he provided detailed information to the former INS regarding living conditions in India during the course of his asylum application because he was in regular contact with friends and relatives in India at that time. He asserts that he did enter the United States through Thailand as a seaman, but that he did so upon his second entry into the United States. He notes that he has used the name [REDACTED] since childhood and that he is known by this name when he worked for [REDACTED]

The applicant also submits the following additional evidence in support of his application:

- An affidavit from [REDACTED] that was notarized on March 3, 2007. The affiant states that he is the applicant's maternal uncle and asserts that the applicant uses both the names [REDACTED]
- An affidavit from [REDACTED] that was notarized on March 3, 2007. The affiant states that the applicant was named [REDACTED] when he was first born, but that he was re-named at a religious ceremony. He asserts that because of this, the applicant is known by both names.
- An affidavit from [REDACTED] that was notarized on February 28, 1997. The affiant

states that the applicant is known by both the nickname [REDACTED] and by his proper name [REDACTED]

- The applicant resubmits a pay stub that indicates that [REDACTED] Labor Contractor paid [REDACTED] for employment performed in the period ending on November 2, 1981.

A photocopy of the identity page of applicant's son's passport. This passport indicates that [REDACTED] was born on November 15, 1981. This passport also indicates that [REDACTED] father is named [REDACTED]

- A photocopy of the applicant's son's birth certificate. The translation of this document indicates that the applicant is the father of a son named [REDACTED] who was born on [REDACTED]

A photocopy of the applicant's son's Form I-94 that shows that he indicated that his date of birth was [REDACTED]

The AAO has reviewed the documents as noted above that are relevant to the applicant's claim of having maintained continuous residence in the United States for the duration of the requisite period and has found that the applicant has failed to meet his burden of proof. Though he has submitted contemporaneous and other evidence of his residence in the United States during the requisite period, these documents do not overcome the applicant's prior testimony that he did not first enter the United States until a date after May 1982. He has submitted evidence on appeal that indicates that his son was actually born in 1981 rather than in 1982. He has also re-submitted a pay stub issued to an individual named [REDACTED] in 1981 and submitted additional documents stating that he sometimes uses this name. However, the AAO finds that this new evidence, when considered with other documents in the record, does not allow the applicant to meet his burden of proof. Specifically, he does not his previously testimony that he did not enter the United States before January 1, 1982. Evidence in the record on which he has stated that he first entered the United States after January 1, 1982 includes: 1) the Form I-589 Request for Asylum on which the applicant indicated that he arrived in the United States on May 21, 1982 at the port of Galveston, Texas by means of a marine vessel named the [REDACTED]; 2) the Form G-325A, Biographic Information that he signed on July 18, 1985 on which he stated that he resided in Ludhiana, Punjab, India from his date of birth until February 1982 and that he then resided and worked on the marine vessel [REDACTED] as a crewman from March 1982 until May 1982 and that his first employment in the United States began in June 1982; 3) the Form I-352 Immigration Bond which indicates that the applicant arrived in the United States in June 1982; 4) an Interview Information Sheet, Deportation Branch on which he stated that he entered the United States on June 1982 as a crewman and was then first employed in July 1982.

On the applicant's Form I-687 submitted pursuant to the CSS/Newman Settlement Agreements, which he signed under penalty of perjury, he showed that he resided and worked in the United

States since 1981 and that he was absent from the United States on three occasions, in May 1982, from January to February 1986, and during the month of July 1987. However, other evidence in the record shows that the applicant indicated that he first entered the United States in either May or June of 1982 and obtained his first employment in the United States after that time. The record also shows that the applicant was granted voluntary departure and left the United States on January 21, 1986 and that he appeared at a United States Embassy in September of 1988. The applicant indicated that his absence in 1986 occurred because he wanted to visit family and he did not indicate that he was absent from the United States in 1988 at any time. These inconsistencies cast doubt on whether the applicant has accurately indicated whether he began his residence and employment in the United States prior to January 1, 1982 and whether he has fully disclosed his absences from the United States during the requisite period to CIS.

The inconsistencies in the record regarding when the applicant first began residing in the United States and regarding his absences seriously detract from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.12(f), the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Given the applicant's contradictory statements on his applications, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period under both 8 C.F.R. § 245a.12(e) and *Matter of E- M--*, *supra*.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988 as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he 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.