

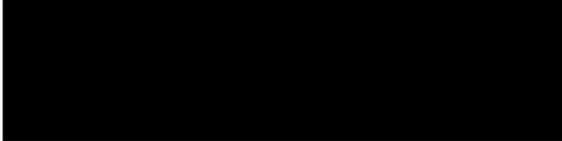
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



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FILE: [REDACTED] Office: GARDEN CITY Date: **APR 06 2009**
MSC 02 180 62382

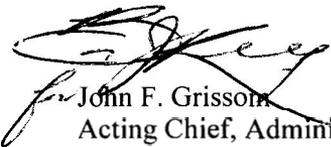
IN RE: Applicant: [REDACTED]

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).

IN BEHALF OF APPLICANT: Self-represented

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.


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Garden City, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, the applicant asserts he has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant provides additional affidavits in support of the appeal.

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. Section 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 periods, is admissible to the United States under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- An affidavit from a relative, [REDACTED] who indicated that the applicant resided with him in Sacramento, California from August 1981 to July 1986.
- An affidavit from [REDACTED] of British Columbia, Canada, who indicated that the applicant visited her home from September 20, 1987 to October 10, 1987.
- Affidavits from cousins, [REDACTED] and [REDACTED], and a brother-in-law, [REDACTED], who attested to the applicant's California residence from August 1981 to July 1986 at [REDACTED] Sacramento and from July 1986 to January 1991 at [REDACTED] Bakersfield. The affiants indicated that they have been in contact with the applicant since his arrival.
- An affidavit from [REDACTED], who attested to the applicant's California residence from August 1981 to July 1986 at [REDACTED] Sacramento and from July 1986 to January 1991 at [REDACTED] Bakersfield. The affiant asserted that he has been in contact with the applicant.

On January 2, 2008, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted appeared to be neither credible nor amenable to verification and that no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified in their respective affidavits. The applicant was given 30 days in which to submit a rebuttal. The record, however, does not contain a response. Accordingly, on February 5, 2008, the director denied the application.

On appeal, the applicant submits:

- An additional affidavit from [REDACTED], who reasserted the veracity of his initial affidavit. The affiant indicated that in April 1982, he visited the applicant in Sacramento at [REDACTED], and in July 1986 he lent the applicant money in order to move to Bakersfield. The affiant attested to the applicant's trip to Canada from September 1987 to October 1987.
- An affidavit from [REDACTED], who indicated that in August 1981, he received a telephone call from the applicant indicating that he was in the United States and needed financial help. The affiant asserted that he visited the applicant at [REDACTED] in Sacramento and has been in contact with the applicant since August 1981.
- Affidavits from [REDACTED] and [REDACTED], who indicated that in September 1981, they received a telephone call from the applicant indicating that he was in the United States. The affiants asserted that they visited the applicant at [REDACTED]

██████████ in Sacramento in October 1981 and they regularly met the applicant at the Sikh Temple in Stockton. ██████████ attested to the applicant's visit to Canada from September 1987 to October 1987.

The U.S. Citizenship and Immigration Services (USCIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, *supra*. In ascertaining the evidentiary weight of such affidavits, USCIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988, as he has presented contradictory and inconsistent documents, which undermines his credibility.

The affidavit from ██████████ only serves to establish that the applicant was in Canada in September and October 1987. The affiant makes no reference to where the applicant was residing during the period in question.

██████████ and ██████████ indicated that they regularly met the applicant at the Sikh Temple in Stockton, California. The applicant, however, did not claim on his Form I-687 application to have been affiliated with a Sikh Temple in Stockton.

The applicant claimed on his Form I-687 application to have been employed during the requisite period. The applicant, however, did not provide any evidence to support this claim.

Although the applicant asserts that no attempt has been made to verify the content of testimony contained in the supporting affidavits, he fails to advance any compelling reason as to why any attempt should be made in light of the minimal probative value of the applicant's evidence of residence.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

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). Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant 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.