



U.S. Citizenship
and Immigration
Services

L2



FILE: [REDACTED] Office: SAN FRANCISCO Date: **DEC 02 2009**
MSC 02 187 61196

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.

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, 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, California, 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.

At the time of the appeal, in November 2007, a Notice of Entry of Appearance as Attorney or Representative (Form G-28) was filed by [REDACTED]. In a subsequent letter to the AAO on April 4, 2008, counsel requested that he “be allowed to withdraw from any further representation of this client.” Therefore, the applicant will be considered to be self-represented and a copy of this decision will be furnished only to the applicant.

On appeal, former counsel argues that the applicant was not given an opportunity to counteract the basis for the denial of the application. Counsel asserts that the applicant was denied due process.

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 [REDACTED] of Sri Guru Nanak Sikh Temple in Yuba City, California, who indicated that he first met the applicant at the temple in Yuba City in November 1981. The affiant indicated that the applicant “often came to special events and occasions and helped us with community service. He came to our Gurdwara a lot from 1981 till present.”
- A letter dated October 8, 2003, from [REDACTED] who indicated that on March 5, 1981, the applicant provided music and dancing entertainment at his anniversary party. The affiant indicated that in June 1983 the applicant provided similar entertainment for his guests.
- A statement dated October 1, 2003, from [REDACTED] of San Antonio, Texas, who indicated that he and the applicant “lived together in San Leandro and Emryville, [sic] Ca in March of 1986 through 1990.”
- A copy of his marriage certificate which occurred in India on April 19, 1988.

At the time of his LIFE interview, the applicant indicated that he traveled from India to Mexico by airplane with a false passport and entered the United States without inspection sometime in 1981. The applicant further indicated that during the requisite period he was only absent from the United States from March 1988 to April 1988.

On June 20, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that there were inconsistencies between his applications, testimony and supporting documents. Specifically, at the time of his LIFE interview, the applicant indicated that he entered the United States without inspection in 1981 and had only one departure during the requisite period in March 1988 and that he reentered without inspection. However on his Form I-687 application, the applicant claimed to have been issued a visitor visa on August 2, 1981 for one week and overstayed. The applicant also claimed to have been absent from the United States from March 1987 to April 1987. The applicant was also advised that his marriage certificate reflected his permanent and present residence in India, and that the documentation submitted was insufficient to establish continuous residence in the United States since before January 1, 1982, through May 4, 1988.

The director, in issuing the Notice of Intent to Deny, appeared to indicate that the applicant had not established class membership as the notice indicated:

However to qualify as a class member of CSS, you had to have established that you were outside of the United States between May 1, 1987, and were told that you were not eligible to apply for legalization.

The director's finding, however, will be withdrawn as the applicant indicated on his affidavit to determine class membership that he departed the United States on April 1, 1987 and returned on April 4, 1987, and was informed by an agent of the legacy Immigration and Naturalization Office in Chicago Illinois that he was not eligible to apply for legalization.

In response, the applicant's former counsel indicated that the director erred in giving minimal weight to the affidavits. Counsel indicated that the affidavit from the Sikh Temple was authentic and bonafide and the affidavit from [REDACTED] fully supported the applicant's case. Counsel argued the affiants were not contacted and, therefore, it was unfair to discount the veracity of a document which the director has failed to verify. Counsel indicated that director had not commented upon the applicant's testimony, "except the minor discrepancy and/or inconsistency as to an omission regarding his departure from the United States in 1987." Counsel argued that the applicant was not confronted with "this so call minor inconsistency." Counsel indicated, "[t]here is nothing in the record which undermines the applicant's otherwise credible testimony." In regards to the information noted on the applicant's marriage certificate, counsel indicated the applicant "may have made an innocent mistake, providing his residence address in India. The address in India was his permanent address at least for the time he was in India." Counsel argued that in the Notice of Intent to Deny, the director did not raise any inconsistencies and/or discrepancies."

The applicant's former counsel also provided copies of documents that were previously provided.

The director, in denying the application, noted that the applicant did not indicate at the time of his interview or claim on his application to have resided in California in 1981, and the applicant claimed residence in New York from September 1981 to November 1989. In regards to the affiants not being contacted, the director determined that the applicant bears the burden of proof in establishing eligibility for the benefit being sought. In regards to counsel's assertion that the director did not find any inconsistencies and/or discrepancies, the director noted in addition to the Indian address listed on the marriage certificate and the applicant's failure to mention his 1987 departure at the time of his LIFE interview, the applicant indicated at the time of his interview that he entered without inspection in 1981. However, on his Form I-687 application, the applicant claimed to have entered the United States with a B-2 nonimmigrant visa in 1981.

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 should be analyzed to determine 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 brief issued by the applicant's former counsel has 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.

Regarding the affidavit from [REDACTED], and the applicant's manner of entry, counsel asserts that the applicant was not questioned to explain these anomalies. Counsel's assertion is without merit as the Notice of Intent to Deny clearly advised the applicant of inconsistencies between his testimony, applications and supporting documents and provided the applicant the opportunity to explain the contradictions. 8 C.F.R. § 245a.20(a)(2).¹

In addition, former counsel's argument is misleading and deceptive. The issue of the applicant's presence subsequent to May 4, 1988 is irrelevant in establishing eligibility. 8 C.F.R. § 245a.15(a). Despite counsel's argument, the applicant was asked about his residence during the relevant period (prior to January 1, 1982 through May 4, 1988). Counsel and the applicant have yet to explain how the applicant was attending a Sikh Temple "a lot" in California when he was living in New York during the same time period. Furthermore, the affidavit from [REDACTED] raises questions to its authenticity as the applicant did not list any association or affiliation with a religious organization during the requisite period at item 34 on his Form I-687 application.

[REDACTED] in his affidavit, indicated on March 5, 1981, that the applicant provided music and dancing entertainment at his anniversary party. The applicant, however, indicated on his affidavit to determine class membership that he first arrived in the United States in August 1981.

The affidavit from [REDACTED] also raises questions to its authenticity as the applicant did not claim on his Form I-687 application residence in California during the requisite period.

The applicant's former counsel has not provided a plausible explanation for the applicant's failure to mention his 1988 departure on his Form I-687 application or his 1987 departure at the time of his LIFE interview.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice

¹ The regulation was amended so that effective June 18, 2007, the requirement of a Notice of Intent to Deny is no longer required. *See* 72 Fed. Reg. 19100 (April 17, 2007).

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).

The applicant claimed on his application to have been employed as a gas attendant during the requisite period. However, he has not provided any evidence to support this claim. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Given the numerous 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.