



U.S. Citizenship  
and Immigration  
Services

L2

FILE:

MSC-02-012-60463

Office: FRESNO

Date: DEC 08 2009

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. 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.

  
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, Fresno. The case 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 since before January 1, 1982 through May 4, 1988. The director stated that the applicant did not provide sufficient evidence to meet his burden of proof to establish his eligibility for the benefit sought.

On appeal, the applicant, through counsel, asserts that he has established his unlawful residence for the requisite time period.

An applicant for temporary 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 the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b).

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. *See* 8 C.F.R. §

245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 since 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in continuous unlawful status during the requisite period consists of affidavits, letters, and other documents. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The affidavits from [REDACTED] all contain statements that the affiants have known the applicant for years and that attest to the applicant being physically present in the United States during all or part of the required period. These affiants fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the

applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The record of proceeding contains a letter on Dundas Inc. letterhead signed by Mr. [REDACTED] Mr. [REDACTED] states that the applicant worked for Dundas from October 1981 to March 1990 as a stock person and desk clerk. Mr. [REDACTED] also states that the applicant was paid \$5.50 per hour. The AAO notes that the Mr. [REDACTED] does not provide his title or the source of the information in his letters. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. Pursuant to 8 C.F.R. § 245a.2(d)(3)(i), the employer letters submitted do not provide sufficient information. Given these deficiencies, this letter has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

The record of proceeding also contains a letter on The Sikh Temple Los Angeles Sikh Study Circle Inc. letterhead signed by Mr. [REDACTED] general secretary and dated April 28, 2003. The letter states that the applicant has attended the temple and taken part in voluntary services. The record of proceeding also contains a letter on Bakersfield Sikh Temple letterhead signed by Gurpreet Singh, head priest and dated April 28, 2003. Mr. [REDACTED] states that he has known the applicant for several years and that the applicant is "almost a regular visitor" of the temple. These letters do not provide dates of membership or the source of the information. Further, the AAO notes that the applicant did not list his association with these organizations in the Form I-485. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. Pursuant to 8 C.F.R. § 245a.2(d)(3)(v), the letter submitted does not provide sufficient information. Given these deficiencies, these letters have minimal probative

value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

The record of proceeding also contains a lease signed by the applicant on August 15, 1981. The term of the lease is from August 15, 1981 to August 14, 1990. Although this is some evidence of the applicant's presence in the United States during the requisite period, the applicant does not provide any information as to why he signed a lease with a 9 year term. It is unusual for a landlord of tenant to agree to such a long term for a new tenancy. As stated previously, doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho, supra.*

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have entered the United States in 1981. The applicant has not submitted any additional evidence in support of his claim that he was physically present or had continuous residence in the United States during the entire requisite period or that he entered the United States in 1981.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

On appeal, counsel states that although the applicant asserts that he worked in Los Angeles, he lived in Richmond, California. Counsel states that the applicant's employer provided him with housing during the work week and the applicant returned to Richmond on the weekends. In his decision, the director stated that the employment letter in the record of proceeding did not state that the employer provided the applicant with housing during the work week. The record of proceeding contains no evidence that the applicant lived in Los Angeles while working for Dundas Inc. On appeal, counsel has submitted no evidence that the applicant lived in Los Angeles or that his employer provided housing. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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.

It is noted that there is evidence in the record that the applicant was arrested on June 2, 1996 and charged with disorderly conduct, and fighting in public but that the charges were dropped.

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