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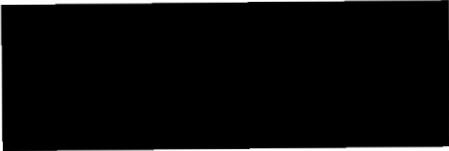
U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [REDACTED]
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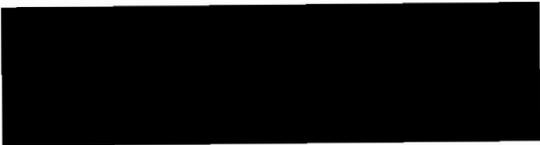
Office: NEW YORK

Date: JAN 23 2009

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).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. 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.


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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application after determining that 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 states that he has submitted relevant, probative and credible affidavits in support of his claim, and that his application should be approved.

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 through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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 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 petitioner 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 petitioner 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 or petition.

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 applicant submitted the following information in support of his claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988:

- [REDACTED] submitted a notarized statement on behalf of the applicant wherein the affiant stated that he has known the applicant since 1983, having first met him at the Sikh Center in Fresno, CA. The affiant further stated that he is aware that the applicant attempted to apply for legalization “during 1987 – 1988,” but was prevented from doing so by immigration officials because the applicant had traveled outside the country during the requisite period.
- The applicant testified before an immigration official on July 8, 2004 that he first came to the United States in February of 1981, entering the country at the Canadian border and then traveling to California. This testimony is inconsistent with information provided by the applicant on a Form I-687 signed by the applicant on September 26, 1990. On that document, the applicant was asked to supply a list of all his residences in the United States from his first entry into the country. The applicant stated that his first residence in the United States was [REDACTED] Fremont, CA, and that he resided there from July of 1981 until September of 1981. The applicant does not list a residence in the United States from February of 1981 through July of 1981. This inconsistency is not explained in the record and calls into question the actual date of the applicant’s arrival to the country.

The applicant claimed on a Form I-687, and testified during his LIFE interview, that he was continuously present in the United States during the statutory period, except for a 30 day trip to Canada in 1987. On June 13, 2007, the director issued a Notice of Intent to Deny (NOID). The director concluded that the applicant had failed to submit adequate, credible evidence of continuous, unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988. Specifically, the director found that the applicant had failed to prove that he arrived in the United States before January 1, 1982 and was, therefore, ineligible for the immigration benefit sought. In response to the NOID, counsel states that the applicant has provided properly prepared affidavits that establish the applicant’s continuous residence in the United States during the statutory period. Counsel also provided telephone numbers for the applicant’s witness, [REDACTED] and proof that [REDACTED] was in the United States in June of 1984.

On July 14, 2007, the director denied the application based on the reasons set out in the NOID.

Although the applicant has submitted a single affidavit in support of his application, along with his own statement, he has not established his 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.

The referenced affidavit states generally how the affiant knows the applicant, and that the applicant has resided in the United States for the requisite period, or some portion thereof. The witness

statement provides no additional relevant information. The affidavit does not provide concrete information, specific to the applicant and generated by the asserted association with him, that would reflect and corroborate the extent of that association and demonstrate that it is a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavit. 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 the witness statement/affidavit submitted by the applicant does not indicate that its assertions are probably true. Therefore, the affidavit is of little probative value.

Thus, it is found that the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988. Accordingly, the applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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