

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

L2



FILE:

MSC 01 326 60282

Office: NEW YORK

Date: **JAN 30 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. 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.

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

The director denied the application on the ground that the applicant failed to establish he had entered the United States before January 1, 1982, and had resided continuously in the United States from then through May 4, 1988.

On appeal, counsel for the applicant submits a brief statement and additional documentation.

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 its amenability to verification. *See* 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 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). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v), states that attestations from churches, unions, or other organizations should: identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided during the membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

The applicant filed a Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on August 22, 2001. On July 11, 2007, the director denied the application. The applicant, through counsel, filed a timely appeal from that decision on July 25, 2007.

The record reflects that the applicant, a native of India and citizen of Canada, claims to have initially entered the United States as a nonimmigrant visitor in May 1981, and to have departed the United States on only one occasion – for a trip to India from December 1987 to January 1988 in order to visit family in India.

The issue in this proceeding is whether the applicant has demonstrated that he continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

The AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO's *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

In support of his claim, the applicant has submitted the following documentation throughout the application process:

Letters from Acquaintances

1. A notarized letter, dated August 7, 2001, from [REDACTED] of Maspeth, New York, stating that she had known the applicant since 1981.
2. A notarized letter, dated August 7, 2001, from [REDACTED] i of Elmhurst, New York, stating that he had known the applicant since 1981.
3. A letter, dated November 19, 2002, from [REDACTED] of Flushing, New York, stating that he had known the applicant since 1983, and that the applicant resided with him for a few years.
4. An un-notarized letter, dated November 21, 2002, from [REDACTED] Stream, New York, stating that he had known the applicant since 1984.
5. An affidavit, dated July 3, 2007, from [REDACTED] i (see No.8, below) of New Hyde Park, New York, stating that the applicant had resided in the United States since December 1981 except for a brief visit to India in December 1987, and that prior to moving to New York, the applicant had lived in Chicago, Illinois from 1982 to 1989.
6. An affidavit, dated June 30, 2007, from [REDACTED] of Jackson Heights, New York, stating that, "as per [his] information and belief [the applicant] is in the United States since December of 1981 and lived in Chicago, IL and New York during that period."

The affiants are generally vague as to how they date their acquaintances with the applicant, how often and under what circumstances they had contact with the applicant during the requisite period, and lack details that would lend credibility to their claims. As such, the statement can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.

Letters from Organizations

7. An undated letter from [REDACTED], identified as the President of the Sikh Center of New York, Inc., stating that the applicant had been coming to the Center since 1987 and attends Sunday prayer every week.
8. A letter, dated July 2, 2007, from [REDACTED], also identified as the President of the Sikh Center of New York, Inc., stating that the applicant used to visit the Temple on Wednesdays for the past 18 years, providing volunteer services to the devotees in the free community kitchen and other areas.

The above attestations are on letterhead stationary. However, they do not specify the inclusive dates of membership, show all of the applicant's addresses throughout the membership period, or establish the origin of the information being attested to (i.e., whether the information being attested to is anecdotal or comes from church membership records).

Other Documentation

9. A receipt issued to the applicant by East-West Appliances in Jackson Heights, New York, on October 8, 1985.

Because the applicant's name (with no address given) and the date of issuance of the receipt are hand-written, the receipt provides little evidentiary value.

It is noted that the applicant indicated on a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), filed on March 22, 1990, that he had no affiliations with any organizations. He also indicated on that form that he had lived in New York until December 1989 when moving to Chicago. This contradicts the statement provided by [REDACTED] in No. 5, above.

Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

In summary, for the duration of the requisite time period, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv), and no church, union or other organization attestations that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(v)(A) through (G). The applicant also has not provided any documentation including, for example, money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security or Selective Service card, automobile license receipts, deeds, tax receipts, insurance policies or other similar documentation) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K). These documents lack specific details as to how the affiants knew the applicant – how often and under what circumstances they had contact with the applicant – during the requisite time period.

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 (5<sup>th</sup> ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

It is concluded that the applicant has failed to provide sufficient documentation to establish by a preponderance of the evidence that he entered the United States before January 1, 1982, and maintained continuous unlawful residence since such date through May 4, 1988, as required for eligibility for adjustment of status to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.

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