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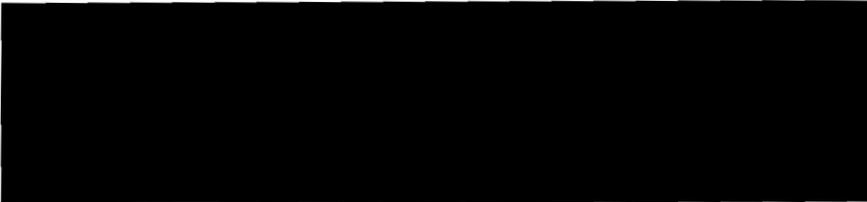
FILE: [Redacted] Office: SEATTLE
[Redacted] – consolidated herein]
MSC 02 134 60811

Date: **JAN 30 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. 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, Seattle, Washington, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant failed to establish that she entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988, as required under section 1104(c)(2)(B) and (C) of the LIFE Act.

On appeal, counsel for the applicant submits a brief and additional documentation. Counsel states that the credible and verifiable evidence submitted by the applicant should have been accorded substantial evidentiary weight and is sufficient to meet the LIFE Act requirements.

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.

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)(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.

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 February 11, 2002. On September 11, 2006, the director denied the application. The applicant, through counsel, timely filed an appeal from that decision on October 10, 2006.

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).

A review of the record reveals that, in an attempt to establish her continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant has provided the following documentation throughout the application process:

1. An affidavit from [REDACTED] dated June 18, 2005, stating that he met the applicant at the Guru Nanak Temple in Yuba City, California, in June 1981, and that she told him that she had entered the United States in April 1981. [REDACTED] further states that he knows the applicant resided in the United States between January 1982 and May 1988 because he met her at various occasions at the temple and she visited his house for dinner. (It is noted that the applicant's file also contains a letter, dated August 15, 2006, from [REDACTED] of Sri Guru Nanak Sikh Temple in Yuba City, California, stating that the temple was first opened in April 1980.)
2. An affidavit from [REDACTED], dated June 22, 2005, stating that he met the applicant, who was a guest at his house in Brighton, Massachusetts, in November 1981, and that the applicant's late father was a friend of his family in India.
3. An affidavit from [REDACTED] i, dated June 5, 2002, stating that he first met the applicant at Sikh Gurdwara Yuba City in April 1981 and that after that, she used to attend family parties.
4. An affidavit dated April 8, 2003, from [REDACTED], stating that, to the best of his knowledge, the applicant has resided in the United States since May 1981. [REDACTED] states that he first saw the applicant at Guru Nanak Temple in Yuba City in May 1981 and has met the applicant at religious functions at the temple.
5. A fill-in-the-blank affidavit of witness from [REDACTED] n, dated August 21, 1990, stating that he employed the applicant doing field work at his ranch in Yuba City, California, from April 1981 to December 1989.
6. A fill-in-the-blank affidavit from [REDACTED], dated August 21, 1990, stating that he had known the applicant since April 1981 and visited her at her homes in Yuba City and Anaheim, California. In a fill-in-the blank declaration of cohabitation, also dated August 21, 1990, [REDACTED] n states that he cohabited with the applicant in Yuba City from October 1981 to July 1983.
7. An un-dated and un-notarized statement from [REDACTED] n stating that the applicant traveled to Canada from the United States from August 15, 1987, to September 12, 1987.

The employment letter provided in No. 5, above, does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that it fails to provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff, if any; state the applicant's specific 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.

The record reflects that Nos. 5, 6 and 7, above, were submitted by the applicant in connection with a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Act). Pursuant to an operation ("Operation Catchhold") conducted by United States Citizenship and Immigration Services (USCIS) with the Federal Bureau of Investigation (FBI), in which 22 brokers who paid bribes to a Chief Legalization Officer on behalf of 1,370 applicants, one of whom was the

applicant, were prosecuted and convicted. Therefore, these documents lack credibility and are of little evidentiary value.

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, the applicant has provided no credible 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), and no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv) and no attestations from churches, unions, or other organizations that comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, Selective Service card, automobile, contract, and insurance documentation, deeds or mortgage contracts, tax receipts, or insurance policies) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K).

The documentation provided by the applicant consists solely of third-party affidavits ("other relevant documentation"). The affiants in Nos. 1 through 4, are vague as to how they knew of the applicant's entry into the United States prior to January 1, 1982, the circumstances regarding their acquaintances with the applicant - how often and when they had contact with the applicant throughout the requisite period, and lack details that would lend credibility to their alleged more than 22-year relationships with the applicant. As such, the statements can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite 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 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the paucity, insufficiency, and lack of credibility in the documentation provided, the AAO determines that the applicant has not met her burden of proof. The applicant has not established, by a preponderance of the evidence, that she entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously since that time through May 4, 1988, as required under 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, she 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.