

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

L2



FILE:

[Redacted]  
MSC 01 282 60249

Office: SAN JOSE

Date:

**JUN 29 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).

IN 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, San Jose, 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.

On appeal, counsel asserts that the director did not accord the affiants' declarations full evidentiary weight and his findings were arbitrary and abusive.

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:

- A letter dated August 11, 1990, from [REDACTED] assistant head priest of Pacific Coast Khalsa Diwan Society in Stockton, California, who indicated that the applicant has been a regular member of the Sikh Temple since January 17, 1981.
- Affidavits from [REDACTED] who attested to the applicant's residences in San Francisco and San Jose since September 1981. The affiant asserted that he met the applicant at the Sikh Temple in Fremont, California in 1981 and would meet almost every month at the temple or at other religious and community functions in California.
- An affidavit from [REDACTED], who attested to the applicant's residence in Campbell, California since January 1981. The affiant asserted that once a week he and the applicant would socialize.
- An affidavit from an acquaintance, [REDACTED] who attested to the applicant's residence at [REDACTED] since January 1985.
- An affidavit from a brother, [REDACTED] who indicated that he resided with the applicant when he came to the United States in 1982.

The applicant provided a statement indicating that during the requisite period he considered himself to be self-employed.

In response to a Form I-72 dated July 24, 2003, which requested the applicant to submit evidence of his continuous residence during the requisite period, the applicant submitted:

- Affidavits from [REDACTED] and [REDACTED] who indicated that they met the applicant in August 1981 and in 1982, respectively. [REDACTED] indicated that he met the applicant at a friend's wedding in Stockton, California, and [REDACTED] indicated that she met the applicant at a family birthday party in 1982 in San Jose, California. Both affiants indicated that they have been socializing with the applicant at family, community and religious functions since that time.
- Affidavits from [REDACTED] and [REDACTED], who indicated that they first met the applicant in California in October 1984 and November 1984, respectively. The affiants indicated that they and the applicant have met at many community and religious ceremonies since that time.
- An affidavit from [REDACTED], who indicated that he resided with the applicant when he came to the United States on November 26, 1982, and has remained in contact with the applicant through community and family ceremonies.

- An affidavit from [REDACTED] who indicated that he met the applicant at a community function in San Jose, California in August 1981 and has remained in contact with the applicant through community and religious functions.
- A letter dated August 5, 2003, from [REDACTED] a priest at Gurdwara Sahib in San Francisco, California, who indicated that the applicant had been a member since 1983.

On November 10, 2003, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted did not contain sufficient objective evidence to which they could be compared to determine whether the attestations were credible, plausible, or internally consistent with the record. Counsel, in response, submitted:

- An additional letter dated November 22, 2003, from [REDACTED] at Gurdwara Sahib in San Francisco, California, who indicated that the applicant had been a member since 1983.
- A cash receipt dated December 11, 1983.
- A photocopy of a photograph counsel claims was taken in the United States in January 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 statements issued by the applicant and counsel have 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.

The letters from [REDACTED] and [REDACTED] have little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the affiants do not explain the origin of the information to which they attest.

The applicant claimed on his Form I-687 application that he was self-employed during the requisite period. However, the applicant provided no evidence such as letters from individuals with whom he had done business as required under 8 C.F.R. § 245a.2(d)(3)(i).

The photograph has no identifying evidence that could be extracted which would serve to either prove or imply that the photograph was taken in the United States.

[REDACTED], in his affidavits, attested to the applicant's residences in San Francisco and San Jose during the requisite period. The applicant, however, did not claim residence in either city until 1993. [REDACTED] and [REDACTED] asserted that they resided with the applicant in 1982, but failed to provide the place of residence.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. The remaining affiants' statements do not provide detailed evidence establishing how they knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, an affiant's affidavit 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. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits from the affiants do not provide sufficient detail to establish that they had an ongoing relationship with the applicant for the duration of the requisite period that would permit them to know of the applicant's whereabouts and activities throughout the requisite period.

Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period. Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE ACT.

The AAO maintains plenary power to review each appeal 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 AAO's de novo authority has been long recognized by the federal courts. See, e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

On his initial Form I-687 application, the applicant did not list the dates of birth of his children. On his LIFE application, the applicant listed his children's dates of birth as October 7, 1976, April 15, 1979, February 2, 1979, and September 20, 1981. However, at the time of his LIFE

interview, the applicant indicated that he had a child born in 1985. The applicant, on his Form I-687 application, did not disclose an absence from the United States in 1984 or 1985. The applicant's failure to disclose this absence from the United States is a strong indication that the applicant was not in the United States during this period or may have been outside the United States beyond the period of time allowed by regulation. This further undermines the credibility of the applicant's claim to have continuously resided in the United States since before January 1, 1982, through May 4, 1988.

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