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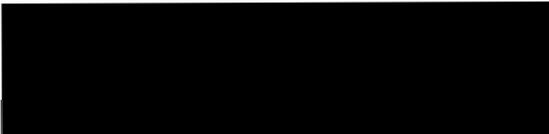
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090



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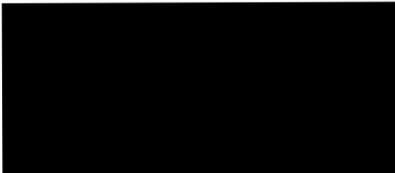
Applicant:



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.

for 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, Newark, New Jersey, 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 has failed to consider the totality of the evidence and testimony given by the applicant. Counsel asserted that the applicant has submitted affidavits properly prepared and executed in support of his continuous residence during the requisite period.

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 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.

On his initial Form I-687 application signed August 31, 1990, the applicant claimed to have resided in Los Angeles, California from November 1981 to June 1986, and claimed employment at Mharani Restaurant from November 1981 to June 1986 and at Taj Mahal Restaurant from July 1986 to November 1989.

The applicant filed a second Form I-687 application signed October 10, 1990, and items 33 and 36, which relate to the applicant's residence and employment during the requisite period, were left blank. The applicant subsequently amended the application to indicate he was self-employed throughout the requisite period.

The applicant submitted another amended Form I-687 application on which he claimed residence at [REDACTED] from September 1981 to July 1990.

The record reflects that on May 8 1997, the District Director, San Francisco, California issued a Notice of Intent to Revoke for this application, which was based on a legacy Immigration and Naturalization Service investigation called Operation [REDACTED]. The notice advised the applicant that he had been identified as procuring his Form I-688A through the payment of a bribe to the Salinas Chief Legalization Officer, who was working undercover in Operation [REDACTED]. The applicant was further advised that Federal Bureau of Investigations had identified 22 brokers who paid bribes to the Chief Legalization Officer on behalf of 1,370 applicants and that the brokers had been prosecuted and convicted. The applicant was informed that his application, with bribe payment, was earmarked and segregated and he was issued a Form I-688A, employment authorization card in conjunction with the filing of his Form I-687 application. However, the issuance of the employment card was not indicative of the *Catholic Social Services* class membership.

The applicant was given 18 days to submit a rebuttal. The applicant, however, failed to respond to the notice and on June 30, 1997, the district director issued a Notice of Revocation, which revoked the applicant's work authorization and class membership.

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:

- Affidavits from [REDACTED] of Indian Delhi Palace Cuisine of India in Phoenix, Arizona, who indicated that the applicant was in his employ from January 1987 to April 1990 and who attested to the applicant's residence at [REDACTED] Phoenix, Arizona during this period. The affiant asserted, "we uses [sic] his pay to pay his rent and all utility bills while he was my employee."

An affidavit from [REDACTED] of Taj Mahal Restaurant in Scottsdale, Arizona, who indicated that the applicant was in his employ from December 1981 to December 1986 and that while the applicant was in his employ, "we used to pay cash rent and all utilly [sic] bills for him." The affiant attested to the applicant's residence at [REDACTED] Scottsdale, Arizona during this period.

- An affidavit from [REDACTED] of Amrise Sales Corp. at [REDACTED] New York City, who indicated that the applicant had worked for his company during the summer of 1982 and over the holiday season in 1982 and 1983.
- An affidavit from [REDACTED] who indicated that he has known the applicant since February 1982. The affiant indicated that the applicant was his roommate from April 1982 to July 1987 off and on at [REDACTED] in New York City.
- Affidavits from [REDACTED], who indicated that he has known the applicant since November 1982. The affiant indicated that he met the applicant at a party and has remained friends with the applicant since that time.

An affidavit from [REDACTED], who indicated that he met the applicant in December 1981 at a meeting at the Sikh Cultural Society Richmond Hill, New York. The affiant indicated that he has been in close contact with the applicant since that time.

- An affidavit from [REDACTED], who indicated that she has known the applicant since October 1981 and visited the applicant in 1987. The affiant attested to the applicant's moral character and indicated that she has remained in contact with the applicant since 1981.
- Two envelopes postmarked in 1983.

An affidavit notarized October 10, 1990, from [REDACTED], who indicated that he cohabitated with the applicant since 1980 at [REDACTED], Hayward, California.

A letter dated February 15, 2003, from the manager at [REDACTED] [REDACTED] New York, who attested to the applicant's residence from April 1982 to July 1987.

A letter from priest [REDACTED] of The Sikh Cultural Society, Inc., who indicated that the applicant has been a member of the temple since December 1981.

An agreement dated October 24, 1984 between [REDACTED] and [REDACTED] in Jamaica, New York.

On August 23, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that the documents 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. Specifically: 1) the agreement from [REDACTED] failed to include the individual's complete name and the individual's signature is not legible, therefore, it cannot be determined who the primary lease holder was for this residence; 2) the affidavit from [REDACTED] attested to the applicant's residence at [REDACTED], Scottsdale, Arizona from December 1981 to December 1986, and the affidavit from [REDACTED] attested to the applicant's

residence at [REDACTED] Phoenix, Arizona from January 1987 to April 1990. However, on his Form I-687 application, the applicant indicated that he resided at [REDACTED] Scottsdale Arizona from September 1981 to July 1990; and 3) the affiants' affidavits submitted with his LIFE application attested to the applicant's residence in New York during the requisite period. The applicant was also informed of the adverse information outlined in the Notice of Intent to Revoke.

The applicant, in response, asserted that he entered the United States in September 1981 and has resided since that time in Arizona, New York, New Jersey and California. In regards to the Notice of Intent to Revoke, the applicant asserted that he paid an individual to prepare his application and had no idea that the individual was an immigration broker who had bribed an immigration officer in order to get his Form I-688A approved. The applicant asserted that he should not be punished for the illegal acts of the immigration broker.

The applicant's former counsel submitted copies of documents previously provided along with additional affidavits from [REDACTED] and [REDACTED] who reasserted the veracity of their initial affidavits. Counsel also provided a photocopied airline ticket from Pan American dated November 16, 1981, for travel from New York to Los Angeles. Counsel asserted that since his entry into the United States in September 1981, the applicant "had to travel all over the country in search of employment. As all the terms of his employment were temporary and in some cases seasonal, he moved around a lot and hence, the different addresses."

The director, in denying the application, noted that the International Air Transport Association airline designator code "PN" listed on the airline ticket was assigned to the second incarnation Pan American Airlines in 1996 and, therefore, the airline ticket was fraudulent as it was not issued during the requisite period.

The director obtained this information from the website, *Wikipedia* (an online encyclopedia). As there are no assurances about the reliability of the content from this open, user-edited internet site,¹ the AAO will not give significant weight to claims for which *Wikipedia* is the only cited source.

¹ Online content from *Wikipedia* is subject to the following general disclaimer:

Wikipedia is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields. See <http://en.wikipedia.org/wiki/Wikipedia:Disclaimers>, accessed on April 23, 2008.

The statements issued by counsel and the applicant 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.

As previously noted, [REDACTED] indicated that the applicant resided at [REDACTED] Scottsdale, Arizona during his employment. However, the applicant has not claimed residence at this location on any of his Form I-687 applications. Likewise, the agreement from Ansar Realty, Inc. lacks probative value as the full name of the individual for whom the agreement pertains to was not listed, and the applicant did not claim on any of his Form I-687 applications to have resided in the state of New York during the requisite period.

Counsel asserts that the applicant moved around the country in order to find employment, hence his different addresses. The Form I-687 application, however, specifically requests the applicant to list *all* his residences in the United States since his first entry, and on each application the applicant did not claim residence in the state of New York during the requisite period. None of the Form I-687 applications reflect that anyone other than the applicant completed the application, as no information is listed in items 44 or 48 and 50 of the application; item 44 of the Form I-687 application revised in 2004 and items 48 and 50 of the application request the name, address and signature of the person preparing the form.

The employment affidavit from [REDACTED] failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, all the employers failed to 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 employment affidavits raise questions to their authenticity as [REDACTED] and [REDACTED] attested to the applicant's employment in Arizona and New York, respectively. However, the applicant claimed on his Form I-687 application signed August 31, 1990, to have resided in Los Angeles, California until June 1986 and on his second Form I-687 application signed October 10, 1990, the applicant claimed to have been self-employed during the requisite period and submitted a signed statement attesting to that fact.

The applicant in one of his amended Form I-687 applications indicated that he resided at [REDACTED] Phoenix, Arizona from September 1981 to July 1990. This address is the business location of Indian Delhi Palace Cuisine of India, and [REDACTED] in his affidavit, made no mention of the applicant residing at his restaurant throughout the requisite period.

The postmarked envelopes raise questions to their authenticity as the applicant did not claim on any of his Form I-687 applications to have resided in the state of New York during the requisite period.

in his affidavit, attested to the applicant residing with him since 1980 at [REDACTED] Hayward, California. This affidavit has no probative value as the applicant claimed to have first entered the United States in September 1981 and did not reside at this address until 1990.

The letters from The Sikh Cultural Society, Inc. and Imperial Court Hotel and the affidavit from [REDACTED] have no probative value or evidentiary weight as the applicant did not claim on any of his Form I-687 applications residence in the state of New York during the requisite period. The remaining affiants failed to state the applicant's place of residence during the requisite period, provide any details regarding the nature of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence. 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.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

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 credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

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