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



**U.S. Citizenship
and Immigration
Services**

L2



FILE: [REDACTED]
MSC-01-361-61078

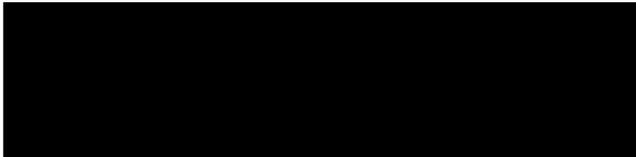
Office: SPOKANE Date:

APR 07 2010

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Spokane and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period, and that the director failed to consider the affidavits that he submitted in support of his application.

An applicant for permanent resident status 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).

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 under the provisions of section 212(a) of the 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).

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. 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.

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 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.

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time.

In a Form I-687, Application for Status as a Temporary Resident, filed by the applicant on January 6, 2006, the applicant indicated at part #30 where he was instructed to list all of his places of residence, that he resided at [REDACTED] in Contra Creek, California from April of 1981 to October of 1986; and [REDACTED] in Phoenix, Arizona from October of 1986 to November of 1988. The applicant also indicated at part #33 of the application that he was employed by [REDACTED] as a farm worker in Mendota, California from April of 1981 to October of 1986; and by [REDACTED] in Phoenix, Arizona from October of 1986 to November of 1988.

In an attempt to establish continuous unlawful residence in the United States throughout the requisite period, the applicant submitted voluminous documentation. The record shows that the applicant submitted copies of his personal tax records, utility bills, his social security statement, his passport documents, bank statements, medical invoices, and an employment letter all dated from 1990 to 2001. The AAO finds that the documents submitted are some evidence of the applicant's residence in the United States beginning in 1990; however, this evidence cannot be afforded any evidentiary weight to establish that the applicant entered the United States prior to January 1, 1982 and resided in the United States during the requisite period.

The applicant also submitted the following attestations:

- An affidavit dated May 24, 1990 from [REDACTED] in which he stated that he was a farm labor contractor and that he employed the applicant as a farm laborer from April of 1981 to October of 1986. The affiant further stated that the applicant was paid in cash and that he used the money to pay for his rent and utilities while employed by him. Although generally consistent with the applicant's claim of employment as a farm worker during the requisite period, the affidavit does not conform to regulatory standards for attestations by employers, which are set forth at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affiant fails to specify whether or not the information was taken from official company records, and he does not specify the address(es) where the applicant resided throughout the claimed employment period. In addition, the affiant fails to indicate where the company records are located and whether the Service may have access to the

records. Furthermore, the record does not contain copies of personnel records, employee attendance rosters, Internal Revenue Service records or time cards that pertain to the requisite period to corroborate the assertions made by the affiant. Because this affidavit does not conform to regulatory standards, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit dated July 13, 1990 from [REDACTED] in which he stated that he was the owner of an ice cream truck and that he employed the applicant from November of 1988 to March of 1990. Here, the period of employment is beyond the requisite period, and therefore, is irrelevant to the applicant's claim of continuous unlawful residence in the United States.
- Two affidavits dated July 13, 1990 from [REDACTED] in which he stated that he was the owner of [REDACTED] located in Phoenix, Arizona and that he employed the applicant from October of 1986 to November of 1988. The affiant also stated that he has known the applicant for the last two years, and that the applicant was residing at [REDACTED] in Phoenix, Arizona from October of 1986 to November of 1988. Here, the affiant contradicts his own statements in that he stated that he has known the applicant for two years (1989-1990) but, claims that the applicant worked for him from 1986 to 1988. There has been no explanation given for this inconsistency. It is also noted that the affidavit does not conform to regulatory standards for attestations by employers, which are set forth at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affiant does not specify layoff periods, the applicant's duties with the company, and whether or not the information was taken from official company records. In addition, the affiant fails to indicate where the company records are located and whether the Service may have access to the records. Furthermore, the record does not contain copies of personnel records, employee attendance rosters, Internal Revenue Service records, payroll records or time cards that pertain to the requisite period to corroborate the assertions made by the affiant. Because the statements are contradictory and because the affidavits do not conform to regulatory standards, they can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A fill-in-the-blank affidavit from [REDACTED], in which he stated that he has known the applicant for the past 5 or 6 years and that the applicant visited Canada during October 1987. The affidavit does not contain a date.
- A fill-in-the-blank affidavit dated July 13, 1990 from [REDACTED] in which he stated that he was the applicant's friend and that he knows for a fact that the applicant resided at [REDACTED] in Cantua Creek, California from April of 1981 to October of 1986. Here, the affiant fails to indicate under what circumstances he met the applicant, the frequency with which he saw and communicated with the applicant, or any other detail that would lend credence to his claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period. Because the affidavit is

significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- A fill-in-the-blank affidavit dated July 14, 1990 from [REDACTED] in which he stated that he and the applicant have lived in the same place since March of 1990. He also indicated that he had personal knowledge of the applicant residing in Cantua Creek, California from April of 1981 to October of 1985, and Phoenix, Arizona from October of 1985 to November of 1988. Here, the affiant fails to indicate under what circumstances he met the applicant and when, the frequency with which he saw and communicated with the applicant, or any other detail that would lend credence to his claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period. Because the affidavit is significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A statement dated July 29, 2001 from [REDACTED] in Fremont, California, in which he stated that the applicant is a member of the congregation and has been attending the Gurdwara Sahib on a continuous basis. He lists the applicant's address as [REDACTED] in Redwood City, California. Here, the declaration does not conform to regulatory standards for attestations by organizations. Specifically, the letter does not state the dates of the applicant's membership, the address where the applicant resided during the requisite period, or the origins of the information attested to. 8 C.F.R. § 245a.2(d)(3)(v). Because this letter does not conform to regulatory standards, it can be accorded only minimum weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit dated May 20, 2002 from [REDACTED] in which he stated that he is a friend of the applicant's and that he has known the applicant since the affiant migrated to the United States in September of 1981. He further stated that he and the applicant have phoned one another and have visited with each other during the years. He also stated that the applicant has been employed by [REDACTED] for the past several years. Here, the affiant fails to specify the applicant's dates of employment, and he fails to provide detail that would lend credence to his claimed knowledge of the applicant's residence in the United States during the requisite period. Because the affidavit is significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit dated September 3, 2002 from [REDACTED] in which he stated that the applicant is a family friend who has been living in the United States since 1981. He also stated that the applicant lived at [REDACTED] in Cantua Creek, California from April of 1981 to October of 1986 and that he visited him at that address. He further stated that the applicant lived at [REDACTED] in Phoenix, Arizona from October of 1986 to November of 1988 and that he kept in contact with him by phone. Here, the affiant fails to indicate under what circumstances he met the applicant, the frequency with which he

saw and communicated with the applicant, or any other detail that would lend credence to his claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period. Because the affidavit is significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An un-notarized, undated affidavit from [REDACTED] in which he stated that he is a friend of the applicant's and that the applicant has lived in the United States for a long time and currently resides at [REDACTED] in Redwood City, California. He further stated that the applicant visited Vancouver, Canada from October to November of 1987. The affiant fails to specify when or where he met the applicant. He also fails to specify the frequency with which he saw and communicated with the applicant during the requisite period. Because the affidavit is significantly lacking in detail, it cannot be afforded any weight in establishing that the applicant resided in the United States during the requisite period.

Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

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