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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  
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK

Date: **MAR 10 2010**

MSC 02-022-60995

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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.

*Elizabeth McCormack*

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

The director determined that the applicant had not provided evidence to adequately establish that he resided in the United States in a continuous, unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act, or that he had been continuously physically present in the United States from November 6, 1986 through May 4, 1988, as required by section 1104(c)(2)(C) of the Life Act. The director concluded that the evidence submitted was inconsistent and contradictory and lacked probative value.

On appeal, counsel asserts that the director's action in denying the application was an abuse of discretion and that there is no material misrepresentation in either the applicant's testimony or the evidence he submitted. Counsel asserts that the affidavits submitted are credible and that the record contains sufficient documentation to establish the applicant's eligibility for temporary resident status.

An applicant for permanent resident status under section 1104 of the LIFE Act (Life Legalization applicant) 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 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 period, is admissible to the United States, and is otherwise eligible for adjustment of status under section 1104 of the LIFE Act. 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 states that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* at 80. 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 either to request additional evidence, or if that doubt leads the director to believe that the claim is probably not true, to deny the application or petition.

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.13(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.

A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. *See* 8 C.F.R. § 245a.14. In this case the applicant applied for such class membership by submitting a "Form for Determination of Class Membership in *CSS v. Meese* [CSS lawsuit]," accompanied by a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)." On October 22, 2001 the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to section 1104 of the Life Act (I-485 LIFE Legalization Application).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing, by a preponderance of the evidence, that his claim of continuous unlawful residence in the United States during the requisite period is probably true. Upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

The applicant submitted four handwritten receipts, one receipt from the California Department of Motor Vehicles, and four postmarked envelopes dated 1981, 1982, and 1986. Two of the four envelopes contain illegible postmarks and the receipt from the California Department of Motor Vehicles is dated subsequent to the requisite period. Although the other documents are some evidence of the applicant's presence in the United States during some part of the requisite period, they are insufficient to establish his continuous residence in the country throughout the requisite period.

The applicant submitted the following evidence:

- A letter of employment from the president of [REDACTED] who stated that the company employed the applicant from October 1981 through August 1982. This statement is inconsistent with the applicant's previous and current Form I-687 where he stated under penalty of perjury at part #36 and part #33 that he was self-employed as an ice cream vendor from June 1981 through May 1989. In addition, the letter does not conform to regulatory standards for attestations by employers. Specifically, the letter does not specify the address(es) where the applicant resided throughout the claimed

employment period, or the exact dates of employment. 8 C.F.R. § 245a.2(d)(3)(i). Here, the declarant fails to indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i).

- A letter from [REDACTED] who stated that the applicant has regularly visited the Sikh Temple since 1981 and has worked as a volunteer in preparing food, serving food, cleaning utensils and the premises, organizing camps for children, and performing other religious services. The declarant's statement is inconsistent with the applicant's statement on his previous and current Form I-687 application, at part #31 and 34 where he was asked to list all associations or affiliations with clubs, religious organizations, churches, unions, or businesses, and he indicated "none." In addition, the declaration does not conform to regulatory standards for attestations by churches at 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the declaration does not state the address where the applicant resided during that period, nor does it establish the origin of the information being attested to and thus its reliability.
- Affidavits from [REDACTED] and [REDACTED] who stated that they have known the applicant since 1981. Although the affiants state that they have known the applicant since before January 1, 1982, the statements do not supply enough details to lend credibility to an at least 24-year relationship with the applicant. For instance, the affiants do not indicate how they date their initial meeting with the applicant, how frequently they had contact with the applicant, or how they had personal knowledge of the applicant's presence in the United States. Further, the affiants do not provide information regarding the applicant's place of residence during the requisite period. Given these deficiencies, these affidavits have minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States throughout the requisite period.
- An affidavit from [REDACTED] who stated that he has known the applicant since 1986. The affidavit fails to provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of his association and demonstrate that he has a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavit. To be considered probative and credible, witness affidavits 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. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, the affiant's statement does not indicate that his assertion is probably true. Therefore, it has little probative value.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to lack credibility or to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. The inconsistencies and contradictions found in the record cast doubt on the applicant's proof. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to overcome the issues raised by the director.

The applicant testified under oath during his immigration interview that he traveled to Canada from the United States on October 15, 1987 to look for a job; and returned to the United States on November 15, 1987. Although the applicant claims on appeal that his absence from the United States in 1987 was brief, casual, and innocent and that his intent was not to remain in Canada, he has failed to establish that he has been continuously physically present in the United States from November 6, 1986 through May 4, 1988. The applicant has failed to present evidence to demonstrate that his purpose for traveling to Canada was not to seek employment.

A LIFE legalization applicant must show continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* Section 1104(c)(2)(B) of the LIFE Act. An absence during this period which is found to be brief, casual and innocent shall not break a LIFE legalization applicant's continuous physical presence. A brief, casual and innocent absence means a temporary, occasional trip abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States. 8 C.F.R. § 245a.16(b). The AAO finds that the applicant's absence from the United States in this case was for the purpose of finding employment in Canada and therefore, was not temporary, and thus interrupted his continuous physical presence in the United States.

The AAO finds that, upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the applicant has not shown by a preponderance of the evidence that he resided in the United States for the requisite period.

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 lack of credible supporting documentation and the inconsistencies noted in the record, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.