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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**

L2

[REDACTED]

FILE:

[REDACTED]

Office: SACRAMENTO

Date:

MAR 07 2011

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. 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, Sacramento, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application based on the determination that the applicant was ineligible to adjust to permanent resident status under the provisions of the LIFE Act. The director found that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, the director noted that the applicant testified under oath on August 28, 2003 that he departed the United States in 1987 for eight or nine months to get married in India, returning in May or June 1988. Noting that this absence exceeds the 45 day limit for a single absence during the relevant period, the director denied the application on July 29, 2004.

On appeal, the applicant indicates that the director erred in denying the application. The applicant requested a copy of the record of proceedings under Freedom of Information Act (FOIA). This request was processed on June 8, 2010. (NRC2010006073).

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Following *de novo* review, the AAO finds that the applicant has failed to establish his continuous residence in the United States from January 1, 1982 through the end of the relevant period.

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 has established that he (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 support of his eligibility, the applicant submits the following:

- A letter from the Sikh Center of New York, Inc. indicating that the applicant has been a member of the church since 1981. This letter does not conform to the statutory requirements for attestations by churches, unions, or other organizations, which is found at 8 C.F.R. § 245a.2 ((d)(3)(v). That regulation requires such attestations to “show the inclusive dates of membership and state the address where the applicant resided during the membership period.” The letter fails to provide dates of the applicant’s membership or any other information that is probative of the issue of his initial entrance to the United States prior to January 1981 or his continuous residence for the duration of the statutory period. Thus, it can be given no probative weight.
- Employment verification letters from [REDACTED] and [REDACTED]. All four letters indicate that the applicant worked for the company during the relevant period, and the applicant lists the employers of his current Form I-687. However, the letters fail to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant’s address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether United States Citizenship and Immigration Services (USCIS) may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer’s willingness to come forward and give testimony if requested. The statements submitted do not include much of the required information and can be afforded minimal weight as evidence of the applicant’s residence in the United States for the duration of the requisite period.

- Affidavits from [REDACTED] and [REDACTED]. All of the affiants indicate that they met the applicant in Yuba City, California. Most indicate that they were introduced to the applicant at the Bouge Road Gurdwara in Yuba City. The applicant does not indicate on his Form I-687 that he moved to California until 1991. He does not list membership in any organizations in California on his Form I-687. It is unclear how the affiants can testify to their continuous association with the applicant in California when he lived in New York for the entire relevant period. The affidavits will be given no evidentiary weight.
- A letter from [REDACTED] indicates that he met the applicant in 1983 and that the applicant is a "regular" at the Temple. The applicant fails to list his association with this Temple on his Form I-687. It is also unclear how the applicant could regularly attend a Temple in California while residing in New York. This letter will be given little evidentiary weight.
- An affidavit, dated August 19, 1991, from [REDACTED] who indicates that the applicant has been his tenant at [REDACTED] since December 1986. This is inconsistent with the applicant's Form I-687 in which he indicates that he resided at [REDACTED] from 1980 until 1991. It is also inconsistent with the applicant's previous Form I-687 in which he indicates that he lived at [REDACTED] from December 1980 until November 1984. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.
- An affidavit from [REDACTED] who indicates that the applicant visited him in Canada from October 4, 1987 until October 26, 1987. The dates have been altered. Additionally, the applicant stated on appeal and in response to the Notice of Intent to Deny (NOID) of his LIFE Act application dated December 11, 2003 that he left the United States "for the first time in June 1988 to get married . . . after that I left for Canada in October 1988 for two weeks." Furthermore, the applicant does not list this absence on his previous Form I-687. He does list this absence on his current Form I-687, however, his testimony contradicts the dates of his absence listed on his application. As noted above, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. The applicant has not resolved this inconsistency or presented any evidence which supports his eligibility.

As noted by the director, the applicant has provided inconsistent information regarding the dates of his absences during the relevant period. Specifically, the applicant submitted a sworn statement dated August 28, 2003 in which he testified that he departed the United States in 1987 for eight or nine months to get married in India, returning in May or June 1988. The director noted that this statement is consistent with the applicant's Form for Determination of Class Membership submitted with his 1991 Form I-687 Application for Temporary Resident Status. In a statement signed by the applicant January

5, 2004, submitted to USCIS in response to the NOID dated December 11, 2003, the applicant indicates that he entered the United States in December 1980 and remained in the United States until June 1988 when he returned to India to get married. However, in a statement submitted to USCIS on September 30, 2004, the applicant indicates that he first left the United States in October 1987 to see a friend in Canada and that he left again in June 1988 to get married in India. The applicant has not submitted any objective independent evidence which clarifies his absences and/or supports his continuous residence throughout the relevant period. Thus, the AAO agrees with the director that the applicant has not established his continuous residence in the United States throughout the relevant period due to his absences which exceed the 45 day limit for a single absence.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

Given the applicant's reliance upon documents with minimal probative value, and the multiple inconsistencies noted, 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.