



U.S. Citizenship
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FILE: [REDACTED]
MSC 02 240 60550

Office: PROVIDENCE, RI

Date: **APR 02 2008**

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 forwarded to the Citizenship and Immigration Services National Records 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and you will be contacted.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The director denied the application because the applicant failed to demonstrate that he resided in the United States in a continuous unlawful status from a date prior to January 1, 1982 through May 4, 1988.

On appeal, counsel indicated that the evidence of record was sufficient to demonstrate that the applicant was continuously present in the United States during the statutory period.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 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, to 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 AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO’s *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.¹

In the very detailed Notice of Intent to Deny (NOID), dated February 27, 2006, the director stated that the applicant failed to demonstrate his continuous unlawful residence in the United States during the requisite period. First, the director pointed out in the NOID that the record does establish that the applicant resided continuously in the United States from 1986 forward. For example, the applicant submitted into the record his 2001 statement from the Social Security Administration which confirms that he has been paying into Social Security beginning in 1986 and each year since. The AAO concurs with this finding by the director. Thus, at issue in this proceeding is whether the applicant resided continuously in the United States from some date prior to January 1, 1982 through January 1, 1986.

The director pointed to discrepancies in the evidence such as the following.

The record included two statements from [REDACTED]. One is on formal General Ceiling Incorporated letterhead stationery. It is dated March 15, 1989. It is signed by [REDACTED], Contractor. It lists an address of [REDACTED] Paterson, New Jersey 07505, and telephone numbers [REDACTED] for General Ceiling Incorporated. [REDACTED] and [REDACTED] are listed as General Contractors in the letterhead. In this letter, [REDACTED] indicated that [REDACTED] had worked for this firm from February 1981 through November 1986.² The second statement is dated November 27, 1989 and is not on letterhead stationery, but on a preprinted affidavit form with certain blanks filled in. It purports to be signed by [REDACTED], having one of the same contact telephone numbers as listed in the letterhead on the March 15, 1989 letter. However, the signature is not remotely similar to the signature on the March 15, 1989 letter. On this statement, [REDACTED] listed his title as “Cotractor” and as “Contrutor and Supervisor”. The November 1989 statement also lists a different name for the company with which [REDACTED] is affiliated, and two words in the company name as they appear in the affidavit are misspelled. That is, it lists a company named “Cetral Ceiling Corp.” The address for this company is different than that listed on the March 15, 1989 letter. Specifically, it lists an address of [REDACTED] Paterson. In the affidavit, [REDACTED] attested that the applicant did labor in “costruction work” for Central Ceiling Corporation from 1981 through 1986. The director pointed out the discrepancies in the two statements and he stated that the State of New Jersey public business records do not list any entity named Central Ceiling Corporation. The director indicated that such discrepancies cast doubt on the authenticity of this evidence and the applicant’s claim that he worked for such a New Jersey company from 1981 through 1986. The director deemed this evidence not probative.

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

² When questioned about his relationship to [REDACTED] the applicant indicated that he had helped Mr. [REDACTED] to secure employment with [REDACTED].

The directed also stated that the record included more than one statement from [REDACTED] and that these statements include information that is inconsistent with the applicant's statements in the record. In her affidavit dated May 7, 2002, she attested that she arrived in the United States in 1983, and that she lived in the same household as the applicant from 1983 through 1986. In her affidavit dated January 28, 2006, [REDACTED] also attested that she met the applicant in 1983 in New Jersey. However, in her affidavit dated November 18, 1989, [REDACTED] indicated that the applicant lived with her beginning when he first arrived in the United States through the date that he was old enough to live on his own. However, the applicant's statements made at his LIFE legalization interview and elsewhere in the file indicate that he entered the United States at or near December 1980. The director indicated that this cast doubt on M [REDACTED] statements and that this evidence was not probative.

Regarding the statement of [REDACTED]'s ex-husband, [REDACTED] a, which lists as its date "&-20-1990", and which indicates that the applicant began working at [REDACTED]'s bakery: Brisas del Valle Bakery beginning in 1984, the director stated that New Jersey public business records show that [REDACTED] a did not own this bakery. Thus, the director indicated that this evidence was neither reliable nor probative.

Regarding the undated statement of [REDACTED], which indicates that [REDACTED] has known the applicant and his family since an unspecified date, the director stated that CIS electronic records indicate that [REDACTED] first entered the United States on August 4, 1987. Thus, this document could not be used to establish that the applicant resided continuously in the United States beginning on some date prior to January 1, 1982 through May 4, 1988.

Further, the director noted that the affidavit of [REDACTED] and [REDACTED] states only that the couple met the applicant in New Jersey in 1983. It does not make reference to whether they had knowledge of his address or had knowledge that he resided continuously in the United States at the time. It also was not amenable to verification. As such, the director found that this evidence is not probative to the matter at issue: whether the applicant resided continuously in the United States during the statutory period.

The director pointed out that the only contemporaneous evidence of the applicant residing in the United States prior to January 1, 1986, in the record, was a handwritten receipt that stated that the applicant bought a radio during 1983. The receipt did not list what entity or individual sold the radio or in what country the transaction took place. The director found that such evidence is not probative. The applicant did not address this point made by the director in the rebuttal or on appeal. The AAO concurs with the finding that this evidence is not probative.

In the rebuttal submitted on March 27, 2006, the applicant attested that he did work for _____ at Central Ceiling Corporation. The applicant indicated that he could not provide information as to why the two [REDACTED] statements in the record list _____ as being employed by two different companies with two different names which have the same telephone number. The applicant could not explain why the State of New Jersey public business records did not list an entity named Central Ceiling Corporation. He explained that he could not contact the company because it was no longer in business. In the April 3, 2006 denial, the director indicated that the applicant had not overcome the director's finding in the NOID that [REDACTED] affidavit was neither reliable nor credible. The applicant stated nothing further regarding this point on appeal. The AAO concurs with the director's finding.

Also in the rebuttal, the applicant indicated that [REDACTED] did arrive in the United States in 1983 and that when she attested that the applicant lived with her after arriving in the United States, she meant that the applicant lived with her family, which is to say the applicant lived with the individual whom [REDACTED] would marry in 1984. In the denial, the director found that this explanation did not overcome the finding in the NOID that [REDACTED] statements were neither reliable nor probative. The applicant did not address this point on appeal. The AAO concurs with the director's finding.

In addition, the applicant submitted in the rebuttal documentary evidence that [REDACTED] did own [REDACTED]s [REDACTED]y, the bakery which he claimed to own, and at which he claimed the applicant worked beginning in 1984. In the denial the director indicated that the applicant had overcome the director's point in the NOID that [REDACTED]'s statement was not probative because it appeared that [REDACTED] did not own Brisas del Valle. However, the director stated that the State of New Jersey public business records indicated that this bakery began its operations in 1989. As such, [REDACTED]'s statement was neither reliable nor probative. The applicant did not address this point on appeal. This office concurs with the director's finding.

In the rebuttal, the applicant did not address the director's point in the NOID that CIS electronic records indicate that [REDACTED] did not enter the United States until August 4, 1987. In the denial, the director found that this amounted to an acknowledgment that [REDACTED] could not attest to the applicant residence in the United States prior to 1987. This point was not addressed on appeal. The AAO concurs with the director's finding.

Finally, in the rebuttal the applicant acknowledged that the affidavit of [REDACTED] and [REDACTED] indicated only that they had known the applicant since 1983 when they met him in New Jersey. As such, the director in the denial restated that this document may not be used to establish continuous residence in the United States during any portion of the statutory period.

In sum, the AAO concurs with the director's finding that the applicant did establish that he resided in the United States from January 1, 1986 through May 4, 1988. Regarding his claim that he resided continuously in the United States beginning on a date prior to January 1, 1982 through January 1, 1986, the applicant submitted a letter from a [REDACTED] and an affidavit from a [REDACTED] that listed inconsistent information. For example, [REDACTED] listed his company name as "Cetral Ceilling Corp." on his affidavit, and as General Ceiling Incorporated in his letter, with both entities sharing the same telephone number but different addresses. In the letter, [REDACTED] described himself as a contractor. In the affidavit, he described himself as a "Contrutor and Supervisor." The applicant submitted an affidavit in which [REDACTED] attested that the applicant lived with her upon his [December 1980] arrival into the United States. She also submitted an affidavit in which she attested that she did not arrive in the United States until 1983.

These discrepancies in the record cast serious doubt on the authenticity of all the evidence of record and on the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988.

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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Such inconsistencies in the record may only be overcome through independent, objective evidence of the applicant's claim that he resided continuously in the United States throughout the statutory period. The applicant has failed to provide contemporaneous evidence that might be considered independent, objective evidence of his having resided in the United States from a date prior to January 1, 1982 and throughout the statutory period.

This office also finds that the various statements in the record which purport to substantiate the applicant's residence in the United States just before and during the statutory period up to 1986 are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States in an unlawful status throughout the entire statutory period.

The applicant has failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988 as required under Section 1104(c)(2)(B) of the LIFE Act. Thus, the applicant has not demonstrated that he is eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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