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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

[REDACTED]

FILE:

[REDACTED]

Office: CHERRY HILL

Date:

DEC 30 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:

[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 of the Cherry Hill office and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant had not established by a preponderance of the evidence that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel for the applicant asserts that the evidence which the applicant previously submitted establishes by a preponderance of the evidence that he continuously resided in the United States in an unlawful status for the duration of the requisite time period. The applicant has not submitted any additional evidence on appeal.<sup>1</sup> The AAO has considered counsel's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.<sup>2</sup>

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that he or she entered the United States before January 1, 1982, and resided in continuous unlawful status since that date through May 4, 1988. 8 C.F.R. § 245a.15(a).

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. See 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation

<sup>1</sup> The record reveals that the applicant's FOIA request, [REDACTED] was processed on June 8, 2001.

<sup>2</sup> The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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 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. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982, and that he continuously resided in the United States in an unlawful status since such date and through May 4, 1988. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of witness statements and documents. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote the witness statements in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite period, it shall not be discussed.

The record contains witness statements from [REDACTED]

[REDACTED] The statements are general in nature and state that the witnesses have knowledge of the applicant's residence in the United States for all, or a portion of, the requisite period.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, their witness statements fail to provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations, and demonstrate that they were a

sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period. To be considered probative and credible, witness affidavits must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific period. Their content must include sufficient detail from a claimed relationship to indicate that it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. For instance, the witnesses do not state how they date their initial meeting with the applicant in the United States. They do not state how frequently they had contact with the applicant during the requisite period, nor do they specify those social gatherings, other special occasions or social events when they communicated with the applicant during that time. The witnesses do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness statements do not indicate that their assertions are probably true.

In addition, J. La Placa states that the applicant resided with him at [REDACTED] in Princeton, New Jersey from August 1981 through the end of the requisite period. [REDACTED]

[REDACTED] state that the applicant resided in the United States from 1981 through the end of the requisite period. The testimony of these witnesses is inconsistent with the testimony of the applicant in a Form G-325A, biographic information sheet, signed by the applicant and filed contemporaneously with an I-485 application in 1996, in which he states that he resided in Guatemala from 1953 until April 1984. Due to these inconsistencies, the testimony of these witnesses will be given no weight.

The applicant has submitted an employment verification letter from [REDACTED] president of [REDACTED] in Princeton, New Jersey, who states that the applicant worked for the company from 1986 through the end of the requisite statutory period.

The employment verification letter of [REDACTED] does not meet the requirements set forth in the regulations, which provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit-form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). The employment verification letter fails to comply with the above cited regulation because it lacks considerable detail regarding the applicant's employment. For instance, the witness does not state the applicant's daily work duties, the location of the applicant's employment, or the applicant's address at the time of employment. For these reasons, the employment verification letter has minimal probative value.

Further, the testimony of the witness is inconsistent with the testimony of the applicant in a Form G-325A, biographic information sheet, dated July 27, 1995, in which the applicant states that he worked for [REDACTED] from 1983 through the end of the requisite statutory period. The testimony of the witness is also inconsistent with the testimony of the applicant in a Form G-325A, biographic information sheet, signed by the applicant and filed contemporaneously with an I-485 application in 1996, in which the applicant states that he resided in Guatemala from 1953 until April 1984. The overlapping dates are incongruous. There are contradictions as to when and where the applicant resided and worked. For these additional reasons, the employment verification letter of [REDACTED] will be given no weight.

In addition, the record contains a witness statement from [REDACTED] Pastor of the [REDACTED] in Princeton, New Jersey. The witness states that the applicant was a member of the church, attending mass regularly, from 1981 through the end of the requisite statutory period. However, the applicant failed to list his membership in the Princeton church or any other organization in a Form I-687, application for status as a temporary resident, filed in 1993. At part 34 of the application, where applicants are asked to list their involvement with any organization, the applicant did not list any organizations. This is an inconsistency which is material to the applicant's claim, in that it has a direct bearing on the applicant's residence in the United States for the duration of the requisite period. As stated above, 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. *Matter of Ho, supra*. This contradiction undermines the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

More importantly, the witness statement does not meet the requirements set forth at 8 C.F.R. § 245a.2(d)(3)(v), which provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where the applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. This attestation fails to comply with the cited regulation. For the reasons stated above, this attestation will be given no weight.

The record contains a copy of four pages of the applicant's Guatemalan passport number [REDACTED] issued to the applicant in Guatemala on November 3, 1981. Page 5 of the passport contains a multiple-entry visitor's visa, issued to the applicant in Guatemala on October 26, 1982, valid until October 26, 1987. Page 4 of the passport contains a Miami entry stamp dated April 25, 1984. These documents are some evidence of the applicant's presence in the United States on April 25, 1984.

The applicant has submitted a letter from Bank of Princeton in New Jersey, stating that the applicant has had an account, number [REDACTED] with the bank from November 18, 1986 through the end of the requisite statutory period. The applicant has also submitted copies of a bank book for account

number [REDACTED] with Nassau Savings Bank in Princeton, New Jersey, showing activity on the account for the same period. The record contains copies of the applicant's federal and state income tax returns for 1987 and 1988, a 1988 W-2 form from [REDACTED] and a statement of earnings from the Social Security Administration for 1987 and 1988. These documents are some evidence in support of the applicant's residence in the United States for some part of 1986, 1987 and 1988.

While some of the above documents indicate that the applicant resided in the United States for some part of the requisite period, considered individually and together with other evidence of record, they do not establish the applicant's continuous residence for the duration of the requisite period.

The remaining evidence in the record is comprised of copies of the applicant's statements, the instant I-485 application, an I-485 application filed in March 1996 on the basis of an underlying Form I-130, petition for alien relative filed by the applicant's spouse, an additional I-130 petition dated February 1996, two additional I-485 applications, filed in 1995 and 1996, respectively, and a Form I-687, application for status as a temporary resident, filed in 1993 to establish the applicant's CSS class membership.<sup>3</sup> The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding the date of his initial entry into the United States, the dates he resided and worked at particular locations in the United States during the requisite period, and the dates of his absences from the United States during the requisite period.

In the I-687 application filed in 1993, the applicant listed a residence on Nassau Street in Princeton, New Jersey from August 1981 through the end of the requisite period. The applicant listed self-employment as a gardener from August 1981 to January 1, 1986, and employment as a cook with [REDACTED] in Princeton from January 1986 through the end of the requisite statutory period. The applicant listed one absence from the United States during the requisite statutory period, from August to September 1987. In a class member worksheet filed contemporaneously with the I-687 application, the applicant stated that he first entered the United States on August 5, 1981.

The applicant's passport number [REDACTED] pages 3 and 5 respectively, reveals that the applicant was in Guatemala on November 3, 1981 when the passport was issued, and on October 26, 1982 when a visitor's visa was issued. In addition, page 5 of the passport reveals that the applicant was absent from the United States for some time prior to his entry into the United States on April 25, 1984.

In the I-485 application filed in March 1996, on the basis of an underlying I-130 petition filed by the applicant's spouse, the applicant stated that he last entered the United States on April 25, 1984. In a Form G-325A, biographic information sheet, signed by the applicant and filed

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<sup>3</sup> The AAO notes that the two I-130 petitions, dated February 1996 and March 1996, respectively, are inconsistent with each other, in that they list different spouses and residence addresses for the applicant. While outside of the requisite period, these inconsistencies call into question the veracity of the applicant's testimony regarding his continuous residence in the United States during the requisite period

contemporaneously with the I-485 application, the applicant states that he resided in Guatemala from 1953 until April 1984.

In a Form G-325A signed by the applicant and filed contemporaneously with the instant I-485 application, the applicant stated that he resided at [REDACTED] in West Windsor, New Jersey from 1986 through the end of the requisite period. This is inconsistent with the information the applicant provided on his Form I-687.

The applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period. The inconsistencies in the applicant's testimony regarding the date of his initial entry into the United States, the dates he resided and worked at particular locations in the United States during the requisite period, and the dates of his absences from the United States during the requisite period are material to the applicant's claim, in that they have a direct bearing on the applicant's residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence pointing to where the truth lies. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA). These contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

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. The various statements currently in the record which attempt to substantiate the applicant's residence and employment in the United States during the statutory period 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 throughout the statutory period, and thus are not probative.

Therefore, based upon the foregoing, the applicant has failed to establish continuous residence in an unlawful status in the United States for some time prior to January 1, 1982 and through May 4, 1988. The applicant is, therefore, not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act. The appeal is dismissed on this basis.

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