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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: CHICAGO Date: OCT 26 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 previously denied by the director of the Chicago office, and the appeal was dismissed by the Administrative Appeals Office (AAO). The director reopened and denied the application. The application is now before the 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 she entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel asserts that the evidence which the applicant previously submitted establishes by a preponderance of the evidence that she continuously resided in the United States in an unlawful status for the duration of the requisite time period.

The AAO notes that the director's decision, at page two, incorrectly states that on June 16, 2008, the applicant's 1990 Form I-687, application for temporary resident status, was denied. The applicant's 1990 I-687 application was filed to establish her CSS class membership. In addition, the director's decision, at page one, incorrectly refers to the Form I-485, application to adjust to permanent resident status under the Legal Immigration Family Equity (LIFE) Act, as an application to adjust from temporary to permanent resident. However, the director's errors are harmless because the AAO conducts a *de* novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).[1]

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that he or she had resided continuously in 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. *See* LIFE Act § 1104(c)(2)(B) and 8 C.F.R. § 245(a).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 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

[1] 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).

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 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 she entered the United States before January 1, 1982, and that she 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 her 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 each witness statement 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 time period, it shall not be discussed.

The applicant has submitted witness statements from [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, the witness statements do not provide concrete information, specific to the applicant and generated by the asserted associations with her, 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 statements 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 time 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, or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The witnesses also do not state how frequently they had contact with the applicant during the requisite period. 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, in a Form I-687, application for status as a temporary resident, filed in 2005, the applicant states that she was employed by witness [redacted] as a live-in maid from August 1981 to April 1984. However, in two statements, dated June 2, 1992 and December 14, 2001, respectively, witness [redacted] does not state that the applicant ever worked for him. Further, although the record contains a 1981 prescription written for the applicant by witness [redacted] the witness does not state that the applicant was ever his patient. In addition, witness [redacted] states that the applicant resided with her on [redacted] in [redacted] for 2 weeks in May 1984 and from December 1986 to July 1987. However, the testimony of this witness is inconsistent with the testimony of the applicant in two I-687 applications, filed in 2005 and 1990, respectively, in which the applicant states that she resided at this address from May 1984 to July 1987. Due to these inconsistencies, the statements of these witnesses will be given no weight.

The applicant has submitted two employment verification letters from [redacted], dated May 26, 1992 and February 12, 2001, respectively, which state that the applicant worked for her as a shampoo girl in 1984. The testimony of this witness is inconsistent with the testimony of the applicant in two I-687 applications. In the I-687 application filed in 2005, the applicant states that she was employed by the witness as a shampoo girl from May 1984 to July 1987. In the I-687 application filed in 1990, the applicant does not list the witness as an employer, and states that she was self-employed doing tailoring and babysitting from September 1981 to July 1987. Due to these inconsistencies, the testimony of this witness has minimal probative value.

Further, the employment verification letters from [redacted] do 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 letters fail to comply with the above cited regulation because they lack considerable detail regarding the applicant's employment. For instance, the witness does not state the applicant's daily duties, the number of hours or days she was employed, or the location at which she was employed. Furthermore, the witness does not state how she was able to date the applicant's employment. It is unclear whether she referred to her own recollection or any records she may have maintained. For these additional reasons, the employment verification letters will be given no weight.

The applicant has submitted copies of two postmarked, stamped envelopes. However, the postmark dates are not legible. Therefore, these documents will be given no weight.

The record contains a copy of an immunization record for one of the applicant's children, recording immunizations administered to the child in [redacted] on October 24, 1981 and March 27, 1987. This document is some evidence of the applicant's residence in the United States for some part of 1981 and 1987.

The applicant has submitted copies of 7 photographs. On of the photographs is dated September 18, 1987, and the remaining photographs are undated. The locations and the persons in the photographs have not been identified. For these reasons, these photographs will be given no weight.

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 I-485 application, an I-687 application filed in 2005, and an I-687 application filed in 1990, to establish the applicant's CSS class membership. The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding the dates she resided and worked at a particular location in the United States during the requisite statutory period.

In the I-687 application filed in 1990, the applicant listed residences in the United States as follows: from August 1981 to April 1984 on [redacted]; from May 1984 to July 1987 on [redacted]; and, from August 1987 through the end of the requisite period on [redacted]

[redacted]. The applicant listed self-employment from September 1981 to July 1987 doing tailoring and babysitting, and employment with [redacted] as a baker from September 1987 through the end of the requisite period.

In the I-687 filed in 2005, the applicant listed employment with [redacted] as a live-in maid from August 1981 to April 1984, employment with [redacted] as a shampoo girl from May 1984 to July 1987, and employment with [redacted] as a baker from August 1987 through the end of the requisite period.

In a statement dated July 24, 1992, the applicant listed her residences in the United States as follows: from August 1981 to May 1984 on [redacted] in 1984 for a few weeks on [redacted]; from 1984 for 1 ½ years at [redacted] from December 1986 to August 1987 on [redacted]; and, from August 1987 through the end of the requisite statutory period on [redacted]

The applicant has failed to provide probative and credible evidence of her continuous residence in the United States for the duration of the requisite period. The many inconsistencies regarding the dates the applicant resided and worked at a particular location within the United States 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). The 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 she is eligible for the benefit sought. The various statements currently in the record which attempt to substantiate the applicant's residence 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 she 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.