

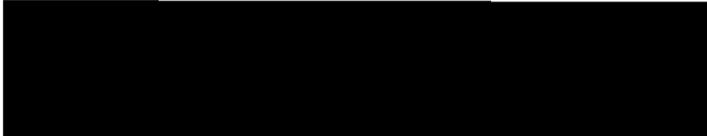
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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FILE: [REDACTED] Office: DALLAS Date: **SEP 08 2010**
MSC-03-245-61938

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 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.

A handwritten signature in ink, appearing to read "Perry Rhew".

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 Dallas 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. Specifically, the director found that the applicant had been absent from the United States for a period in excess of 45 days and had failed to establish that his return had been delayed due to an emergent reason. Therefore, the director concluded that the applicant is not eligible for adjustment to permanent resident status.

On appeal the applicant asserts that his statement that he was absent from the United States during the requisite period for a period in excess of 45 days is in error. The applicant also states that he will submit a brief and/or evidence within 30 days of receipt of the FOIA. The record reflects that the applicant's FOIA request number [REDACTED] was processed on May 10, 2010. The record also reflects that the applicant's FOIA request number [REDACTED] was closed on December 15, 2008 for failure to comply. Further, the record also reflects that the applicant's FOIA request number [REDACTED] was processed on March 18, 1996. The applicant has not submitted any additional evidence on appeal. The AAO has considered the applicant'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.¹

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that he 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).

The regulation at 8 C.F.R. § 245a.15(c) provides, in relevant part, that an alien shall be regarded as having resided continuously in the United States if:

- (1) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982 and May 4, 1988 unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

"Emergent reasons" has been defined as "coming unexpectedly into being." *Matter of C*, 19 I&N Dec. 808 (Comm. 1988).

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).

The application must also be accompanied by evidence establishing an alien's continuous physical presence in the United States from November 6, 1986, through May 4, 1988. 8 C.F.R. § 245a.16(a). For purposes of this section, an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States. Brief, casual and innocent absences means temporary, occasional trips abroad as long as the purpose of the absence from the U.S. was consistent with the policies reflected in the immigration laws of the United States. 8 C.F.R. 245a.16(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 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 first issue in this proceeding is whether the applicant's absences from the United States constitute a break in his required continuous residence during the requisite period. In this case, at the time of his interview on February 2, 2006, the applicant testified that he first entered the United States on May 22, 1981, and that he was absent from the United States three times during the requisite statutory period as follows: from December 15, 1983² until March 1984, due to the birth of his second child, an absence of at least 77 days; from October 16, 1984 for one month for the birth of his third child, and from 1985 until 1987, an absence of at least 530 days.³ The applicant did not provide any evidence of an "emergent reason" for his failure to return to the United States in a timely manner.

On appeal, the applicant states that in 1983 he was only out of the United States from October 21, 1983 until about November 6, 1983, and that he was in the United States the entire year of 1986. He states that at the time of his interview on February 2, 2006, he did not understand the questions because he does not speak or read English. However, at the time of his interview, the interviewing officer noted that the applicant spoke English well, and the applicant stated that he did not have any difficulty understanding English. In addition, the applicant passed his basic citizenship skills test on that date. Therefore, the AAO does not find to be credible the applicant's statement that at the time of his interview he was unable to speak or read English well enough to understand the questions asked by the interviewing officer and to answer the questions.

The applicant's admitted absences from the United States, from December 15, 1983 until March 1984, and from 1985 until approximately June 14, 1987, are clearly a break in any period of continuous residence he may have established. Since the applicant has not provided any evidence of an "emergent reason" for his failure to return to the United States in a timely manner, he has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

² In his statement, the applicant also testified that he remained in Mexico for four months after his second child was born, which would represent an absence of 124 days.

³ In his statement, the applicant testified that he was present in Mexico for two months after the birth of his fourth child on April 14, 1987, or until approximately June 14, 1987.

The second issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of establishing, by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true. The documentation that the applicant submitted 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 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 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, the witness statements do not 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 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 in the United States 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.

The applicant has submitted an employment verification letter from [REDACTED] of Lamanuzzi & Pantaleo. The witness states that he worked for the company as a foreman from August 1979 to September 1987, and that the applicant worked for him from May 1, 1985 to May 1, 1986. However, the record reflects that a payroll clerk at [REDACTED] stated that the witness was a foreman for the company from August 1985 until October 1985, only. Due to this inconsistency, the employment verification letter has minimal probative value.

Further, 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 witness's 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 job title, his daily duties, the number of hours or days he was employed, or the location at which he was employed. Furthermore, the witness does not state how he was able to date the applicant's employment. It is unclear whether he referred to his own recollection or any records he may have maintained. For these reasons, the witness's employment verification letter is of little probative value.

The record contains a copy of an envelope sent by the applicant to his wife with a postmark date of August 18, 1981. This document is some evidence in support of the applicant's presence in the United States on August 18, 1981.

The applicant has submitted a copy of an Allstate health insurance identification card dated April 19, 1982. The applicant has also submitted a copy of an envelope sent by the applicant to his wife with a postmark date of April 23, 1982. The record also contains a copy of a Gemco membership card dated July 22, 1982. These documents are some evidence in support of the applicant's residence in the United States during some part of 1982.

The record contains a copy of an envelope sent by the applicant to his wife with a postmark date of March 9, 1983. This document is some evidence in support of the applicant's presence in the United States on March 9, 1983.

The applicant has submitted a pay stub from [REDACTED] dated March 21, 1984. The record also contains a copy of an envelope sent by the applicant to his wife with a postmark date of September 24, 1984. These documents are some evidence in support of the applicant's residence in the United States for some part of 1984. The applicant has also submitted a pay stub from [REDACTED] dated May 30, 1984. However, the applicant does not list this company as an employer during the requisite period. Due to this inconsistency, this document will be given no weight.

While the documents listed above 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 the applicant's statements, the instant I-485 application, a previous I-485 application to adjust to permanent resident status under the Legal

Immigration Family Equity (LIFE) Act and an I-687 application for status as a temporary resident filed in 2006.

The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding his absences from the United States during the requisite statutory period. In an I-687 application for status as a temporary resident filed in 2006, the applicant listed two absences from the United States, in June 1987 and April 1985, respectively. Further, at the time of his interview the applicant stated that his wife first came to the United States in 2002. Therefore, the applicant would have to have been absent from the United States in early 1983, to conceive his second child, born October 29, 1983. However, the applicant has not listed any absence from the United States in early 1983. These inconsistencies 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. 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*. 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.

As stated previously, 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 the evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). Here, 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 applicant's evidence lacks sufficient detail, and there are material inconsistencies in the record.

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 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. Thus, he is 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.