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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**

[REDACTED]

L2

FILE:

[REDACTED]

Office: CHICAGO

Date:

FEB 23 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 of the Chicago 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.

In the notice of decision, the director stated that the applicant failed to provide a response to the notice of intent to deny (NOID) the application, and the director denied the application based on the reasons set forth in the NOID. On appeal, the applicant asserts that he did not receive a copy of the NOID. The record reflects that on March 23, 2006, the NOID was mailed to the applicant at his address of record. The evidence of record does not reflect that the NOID was returned by the postal service. The AAO finds that the director issued the NOID as required, and declines to reissue the NOID.

On appeal, the applicant asserts that the evidence which he 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 period. The applicant has not submitted any further evidence on appeal.¹ 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.²

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.

¹ The witness statements that the applicant submits on appeal have previously been submitted into the record.

² The AAO maintains plenary power to review each appeal 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 AAO's *de novo* authority has long been recognized by the federal courts. See, e.g. *Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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 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. 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 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 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 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, [REDACTED] states that in *May* 1984, the applicant applied for a job as a cashier at [REDACTED] store, [REDACTED], in Chicago. The witness states that he interviewed the applicant and refused him employment; the witness does not state that the applicant ever worked for him. However, the testimony of the witness is inconsistent with the testimony of the applicant in two I-687 Forms, applications for status as a temporary resident, filed in 2006 and 1990, respectively, in which the applicant states that he was living in [REDACTED] beginning in *March* 1984. In addition, in the I-687 application filed in 2006, the applicant lists [REDACTED] as an employer from August 1987 through the end of the requisite period. Due to these inconsistencies, the testimony of this witness will be given no weight.

The remaining evidence in the record is comprised of copies of the applicant's statements, the I-485 application, the initial Form I-687, application for status as a temporary resident, filed in 1990 to establish the applicant's CSS class membership, and a second I-687 application filed in 2006.

The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding the dates the applicant worked at particular locations in the United States during the requisite period.

At the time of his interview on March 20, 2006, and in a class member worksheet signed by the applicant on November 1, 1990, the applicant stated that he first entered the United States in

November 1980. The applicant listed one absence from the United States during the requisite period, from May to June 1987.³

In the I-687 application filed in 2006, the applicant listed residences in the United States from November 1980 through the end of the requisite period. The applicant listed employment in the United States as follows: from August 1987 through the end of the requisite period at [REDACTED] and [REDACTED]

In the I-687 application filed in 1990, the applicant listed self-employment in the United States from 1981 through the end of the requisite period.

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 regarding the dates the applicant worked at particular locations in 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). 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.

The record reveals that on July 14, 1995, exclusion proceedings were instituted against the applicant based upon the applicant being inadmissible to the United States and excludable as an immigrant without an immigrant visa, pursuant to Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, 8 U.S.C. § 1182(a)(7)(A)(i)(I), and as one who has willfully misrepresented a material fact at the time of seeking admission to the United States, pursuant to Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). An Immigration Judge terminated proceedings on October 19, 1995. Regarding the applicant's inadmissibility

³ The record also contains a Form G-325A, biographic information sheet, signed by the applicant on May 23, 2002, in which the applicant states that he was married on November 19, 1986 in Pakistan. In the two I-687 applications, the applicant does not list an absence from the United States in 1986. At the time of his interview on March 20, 2006, the applicant explained that he "got married through the phone".

under Section 212(a)(7)(A)(i)(I), this ground of inadmissibility does not apply to legalization applicants, pursuant to section 245A(d)(2)(A) of the Act. Regarding the applicant's inadmissibility under Section 212(a)(6)(C)(i) of the Act, although this ground of inadmissibility is waivable, even if the applicant were to be granted a waiver he remains ineligible for failure to establish his continuous unlawful residence.

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.