U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship and Immigration Services

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[redacted]

Date: JUN 20 2011 Office: [redacted] FILE: [redacted]

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 Newark 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 asserts that the evidence previously submitted by the applicant 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 additional evidence on appeal.[1] The AAO has 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. 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).

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[1] The record reveals that the applicant's FOIA request, number [redacted] was processed on October 29, 1997.

[2] 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).

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 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 the following witnesses: [redacted] The statements are general in nature, and state that the witnesses have knowledge of the applicant's residence in the United States from all, or a portion of, the requisite statutory 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 also do not state how frequently they had contact with the applicant during the requisite period. None of the witnesses, with the exception of [redacted] state where the applicant resided 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 letters from [redacted] states that the applicant worked for his band, the [redacted] as a trumpet player from July 1981 through the end of the requisite period. [redacted] states that the applicant worked for him from January 1986 through the end of the requisite period on a part-time basis, as a stockroom worker and manager.

The employment verification letters of [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 witnesses do not state the applicant's daily duties, the number of hours or days he was employed, the location at which he was employed, or the applicant's address at the time of employment. Furthermore, the witnesses do not state how they were able to date the applicant's employment. It is unclear whether they referred to their own recollection or any records they may have maintained. For these reasons, the employment verification letters are of little probative value.

The applicant has submitted a copy of a shipping receipt from [redacted] dated March 17, 1983, for a shipment from New Jersey to Colombia. This document is some evidence in support of the applicant's residence in the United States for some part of 1983.

The record contains a copy of a receipt from [redacted] Instrument Company in New York dated December 20, 1985. This document is some evidence in support of the applicant's residence in the United States for some part of 1985.

The applicant has submitted a copy of postal receipts dated January 6, 1986 and February 28, 1986, and copies of insurance documents dated July 22, 1986. The applicant also submitted copies of concert advertisements containing photographs of himself from October and December 1986, and 1986 W-2 Forms from [redacted] both of Jersey City. The applicant submitted copies of pay stubs from [redacted] dated May 2, 1986 through December 19, 1986. The applicant also submitted a copy of a prescription dated February 5, 1986, which lists the applicant's address as [redacted] However, in two I-687 Forms, applications for status as a temporary resident, filed in 2006 and 1991, respectively, the applicant states that he did not begin living at this address until July 1986. Due to this inconsistency, this document will be given no weight. The remaining documents are some evidence in support of the applicant's residence in the United States for some part of 1986.

The applicant submitted a copy of correspondence from [redacted] dated January 21, 1987, and copies of pay stubs from that company from January 2, 1987 to October 2, 1987.

The record contains 25 stamped envelopes addressed to the applicant in the United States with postmarks dated July 12, 1986 through April 4, 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.

The record contains a portion of Frontier airline ticket [redacted] in the name of [redacted] a name which the applicant asserts he has used as an alias, which contains alterations changing the date of issue of the ticket from December 17, 1985 to December 17, 1987, for a trip from El Paso, Texas to Denver Colorado on that date. The record also contains a Form I-213, Record of Deportable Alien, which reveals that at the time of an illegal entry by the applicant at El Paso on December 17, 1985, this airline ticket was in his possession. The altered date of issue is material to the applicant's claim, in that it has a direct bearing on the applicant's absences from the United States during the requisite period, and therefore, the applicant's continuous residence during the requisite period. Therefore, this document has minimal probative value. Furthermore, 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). This alteration 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.

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, a Form I-687, application for status as a temporary resident, filed in 1991 to establish the applicant's CSS class membership, and an additional 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 date of his absences from the United States during the requisite statutory period.

In the I-687 application filed in 2006, the applicant lists residences in the United States beginning in February 1981 and employment in the United States beginning in July 1981. The applicant lists two absences from the United States during the requisite period, from November to December 1985 and from November to December 1987.

In the I-687 application filed in 1991, and in a class member worksheet filed contemporaneously with that application, the applicant listed one absence from the United States during the requisite period, from November to December 1987.

In the Form I-213, Record of Deportable Alien, dated December 17, 1985, the applicant stated, at the time of his illegal entry on that date, that he had no residence address in the United States and that his permanent address was [redacted]

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 date of the applicant lived at a particular location in the United States, as well as the dates the applicant was absent from 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 December 17, 1985, deportation proceedings were initiated against the applicant pursuant to section 241(a)(2) of the Immigration and Nationality Act (Act), based upon the applicant having entered the United States without inspection at El Paso, Texas on that date.[3] On February 12, 1986, the deportation proceedings were administratively closed. While this

[3] In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA). The former section 241 of the Act was re-designated as section 237 by section 305(a)(2) of IIRAIRA.

arrest is some evidence in support of the applicant's residence in the United States for some part of 1985, it does not establish the applicant's continuous residence in the United States for the duration of the requisite statutory period.

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.