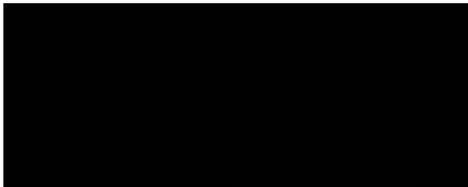




U.S. Citizenship
and Immigration
Services

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FILE:

Office: LOS ANGELES

Date: APR 01 2009

MSC-02-107-60322

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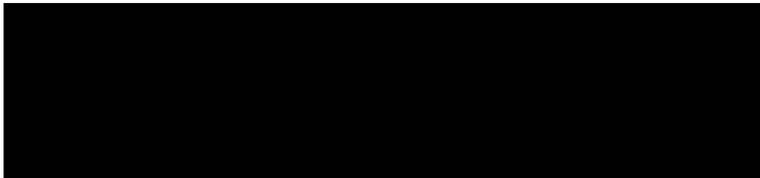
Applicant:



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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Field Office Director, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate that he resided in the United States in a continuous, unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel asserts that the applicant has satisfied his burden of proof. Counsel contends that the director only found minor discrepancies in the applicant's evidence. Counsel further contends that the director failed to analyze each piece of documentary evidence. Counsel notes that the applicant was not informed of the inconsistencies in his record during his interview. Counsel maintains that the application should not be denied solely because the applicant has submitted only affidavits as proof of evidence. The AAO has considered counsel's assertions 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

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish entry into 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 § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant 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 section 1104 of the LIFE Act. 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). 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.12(f).

¹ 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 been long recognized by the federal courts. See, e.g. *Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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.* at 80. 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.

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.

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).

A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. *See* 8 C.F.R. § 245a.14. In this case the applicant applied for such class membership on April 1, 1992 by submitting a “Form for Determination of Class Membership in *CSS v. Meese* [CSS lawsuit]” and on July 24, 1990 and November 6, 1991 by submitting an “Affidavit For Determination of Class Membership in *League of United Latin American Citizens v. INS* [LULAC lawsuit],” accompanied by a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act). On January 15, 2002, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to section 1104 of the Life Act (I-485 LIFE Legalization Application).

The issue in this proceeding is whether the applicant has overcome the inconsistencies in the record and established his eligibility for temporary resident status. As stated, the applicant must establish that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The AAO has reviewed the record in its entirety to determine the applicant’s eligibility.

The record contains affidavits from [REDACTED] and fill-in-the-blank form affidavits from [REDACTED] and [REDACTED]. Although the affiants state that they have known the applicant since 1981, the statements do not supply enough details to lend credibility to an at least 27-year relationship with the applicant. For instance, the affiants do not indicate how they first met the applicant and how they date their initial meeting with the applicant. Nor do they illustrate the frequency of their contact with the applicant and their personal knowledge of the applicant’s presence in the United States. Further, the affiants do not provide information

regarding where the applicant lived or was employed during the requisite period. To be considered probative and credible, witness affidavits must do more than simply state that an affiant 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 the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. None of the affidavits provide such detailed information. For this reason, these affidavits have little probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

The record also contains affidavits from [REDACTED] and [REDACTED]

Although these affidavits offer some information on the applicant's residence in the United States during the requisite period, they 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 during the time addressed in the affidavits. For instance, the affidavits from [REDACTED] and [REDACTED] provide that the affiants resided in India during the requisite period; therefore they do not have first hand knowledge of the applicant's residence in the United States during the requisite period. In addition, the affidavit from [REDACTED] does not explain how he first met the applicant and dated their initial meeting. [REDACTED] affidavit also fails to provide any specific details on the frequency of his contact with the applicant during the requisite period. Given these deficiencies, these affidavits have minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

The record shows that the applicant furnished original retail receipts from [REDACTED] [REDACTED] and [REDACTED] respectively dated October 11, 1981, May 17, 1986 and November 25, 1985. The receipts from [REDACTED] and [REDACTED] do not bear the applicant's name nor do they show his address. Although the receipt from [REDACTED] bears the applicant's last name, it does not show his first name and home address. Therefore, the receipts fail to provide any concrete information that would link them to the applicant. As such, they are in totality of little probative value as evidence of the applicant's residence in the United States.

The record also shows a letter from a dentist with an indiscernible signature. The letter is on the letterhead of [REDACTED] and [REDACTED]. The letter states that the applicant has been his patient for dental treatment since December 1981. The letter fails to explain how the dentist dated the applicant's initial appointment at his office. It is unclear whether the dentist referred to medical records, his own recollection or the applicant's recollection. The letter also does not explain the frequency of the applicant's medical appointments at this dental office. Furthermore, the letter fails to provide the name of its author. Therefore, it is of little probative value as evidence of the applicant's residence in the United States during the requisite period.

The record reveals the following conflicting evidence that contradicts critical elements of the applicant's claim of continuous residence in the United States during the requisite period:

- The applicant initially filed a Form I-687 application, signed July 24, 1990, to establish his LULAC class membership. The applicant showed at part #33 of the application that during the requisite period he resided at [REDACTED] from December 1981 to August 1987 and [REDACTED] from 1987 to present. He showed at part #35 that during the requisite period he traveled to Canada from August 10, 1987 to September 8, 1987. He showed at part #36 that during the requisite period he was employed as a secretary with [REDACTED] from December 1981 to August 1987 and [REDACTED] from September 1987 to present. These responses are inconsistent with the Form I-687 application the applicant filed on September 7, 2004, which shows that the applicant resided in Corona, New York from August 1981 to June 1990; traveled to Mexico from June 1987 to July 1987; and was employed with [REDACTED] in New York, New York from September 1982 to December 1991. The contradictions are material to the applicant's claim because they have a direct bearing on the applicant's residence in the United States during the requisite period.
- As evidence of employment, the applicant furnished employment verification letters from [REDACTED] (Astoria, New York); [REDACTED] (Lakewood, New Jersey); and [REDACTED] (New York, New York). The undated letter from [REDACTED] states that the applicant has been employed with [REDACTED] since September 17, 1987. The letter from [REDACTED] states that the applicant was employed with [REDACTED] from December 25, 1981 to August 2, 1987. The letter from [REDACTED] states that the applicant was employed with [REDACTED] from September 9, 1982 to December 1991. The applicant furnished Mr. [REDACTED] letter and [REDACTED] letter with the Form I-687 application he filed in 1990 to establish his LULAC class membership. However, the applicant failed to show his employment with [REDACTED] and [REDACTED] on the Form I-687 application he filed on September 7, 2004. The applicant instead showed that he was only employed with [REDACTED] during the requisite period. Because of these contradictions, the letters are not credible and of little weight. The contradictions are material to the applicant's claim because they have a direct bearing on the applicant's residence in the United States during the requisite period.
- As evidence of the applicant's residence, the applicant furnished two residence letters from individuals with indiscernible signatures. The letter from the first individual states that the applicant was a tenant at [REDACTED] from December 1981 to August 1987. The undated letter from the second individual states that the applicant has resided at [REDACTED] since August 10, 1987. The applicant furnished these letters with the Form I-687 application he filed in 1990 to establish his LULAC class membership. However, the applicant failed to provide his residences at these addresses on the Form I-687 application he filed on September 7, 2004. The applicant instead showed that he resided at [REDACTED] from August 1981 to June 1990, and furnished a notarized letter from [REDACTED] to corroborate his residence at this address. Because of these contradictions, the letters are not credible and of little weight. The contradictions are material to the applicant's claim because they have a direct bearing on the applicant's residence in the United States during the requisite period.

- On November 6, 1991, the applicant filed another Form I-687 application (EAC 9101280244) to establish his LULAC class membership. The applicant showed at part #33 of the application that during the requisite period he resided at [REDACTED] from 1981 to 1986 and [REDACTED] from 1986 to 1991. He showed at part #35 that during the requisite period he traveled to India from June 1987 to July 1987. He showed at part #36 that during the requisite period he was employed as a cook helper at [REDACTED] from 1983 to 1989. As stated previously, these responses are inconsistent with the Form I-687 the applicant filed on September 7, 2004, which shows that the applicant resided in Corona, New York from August 1981 to June 1990; traveled to Mexico from June 1987 to July 1987; and was employed with [REDACTED] in New York, New York from September 1982 to December 1991. The contradictions are material to the applicant's claim because they cast further doubt upon his continuous residence in the United States during the requisite period.
- On December 4, 1997, the applicant filed a Form I-589, Application for Asylum and Withholding of Removal. The applicant signed this application under penalty of perjury, declaring that the application and the evidence submitted with it are all true and correct. On January 12, 1998, the applicant signed his asylum application under oath before an immigration officer. On January 26, 1998, the applicant's asylum application was referred to an Immigration Judge for a hearing in removal proceedings. The applicant then swore to the contents of his asylum application under oath in a hearing before an Immigration Judge. At part A of the application, where applicants are asked to show the date of their first arrival in the United States, the applicant showed that he first arrived in the United States on September 15, 1997. At part E of the application, where applicants are asked to show their residences for the past five years, the applicant showed that he resided in Punjab, India from April 1987 to September 1997. Part E also requests applicants to show their employment for the past five years. The applicant showed that he was self-employed in agriculture from June 1969 to August 1997. These contradictions are material to the applicant's claim because they indicate that the applicant was residing in India during the entire requisite period.

The foregoing contradictions undermine the applicant's credibility as well as his claim of continuous residence in the United States during the requisite period. Doubt cast on any aspect of the applicant's proof may, of course, 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 (BIA 1988). It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Id.* The director informed the applicant of the aforementioned inconsistencies in a Notice of Intent to Deny (NOID), dated September 7, 2007. In rebuttal to the NOID, the applicant failed to provide any additional evidence to resolve the inconsistencies. On October 12, 2007, the director denied the application based on the findings in the NOID. On appeal, the applicant resubmitted the affidavits from [REDACTED] and [REDACTED]. He failed to submit any additional evidence to resolve the inconsistencies in the record.

The absence of sufficiently detailed supporting documentation, the existence of conflicting evidence that contradicts critical elements of the applicant's claim of residence, and the existence of derogatory information establishes that the applicant used documents in a fraudulent manner and made material misrepresentations in order to procure permanent resident status.

Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The applicant's material misrepresentations undermine the credibility of the supporting documents as well as the credibility of the applicant's claim of residence in this country for the requisite period. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The AAO finds that the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act.

In addition, the AAO finds that the applicant has sought to procure a benefit provided under the Act through willful misrepresentation of a material fact, a ground of inadmissibility under Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). Because the applicant has failed to provide independent and objective evidence to overcome this finding, fully and persuasively, the AAO affirms the director's finding of fraud. A finding of fraud is entered into the record, and the matter will be referred to the U.S. Attorney for possible prosecution, as provided in 8 C.F.R. § 245a.2(t)(4).

ORDER: The appeal is dismissed with a finding of fraud. This decision constitutes a final notice of ineligibility.