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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC-03-207-60137

Office: NEW YORK

Date: MAY 05 2009

IN RE:

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 director of the New York 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 applicant has established his unlawful residence for the requisite time period. The AAO has considered counsel'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.

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

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 long been 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, 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.

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 several affidavits and letters, copies of several postal receipts, and copies of airline tickets. 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 three affidavits of relationship from [REDACTED], dated May 20, 2006, September 1 and October 2, 2007, respectively. The affidavits state that [REDACTED] has been friends with the applicant since 1986.

The record contains one affidavit and one letter from [REDACTED] dated May 16, 2006 and August 29, 2007, respectively. [REDACTED] states that he has been friends with the applicant since 1981, and has seen the applicant in the United States since 1981.

The record contains two unsworn, undated, fill-in-the-blank form affidavits from [REDACTED] and [REDACTED] stating that they have been friends with the applicant since 1981 and that the applicant has resided in Brooklyn since 1981.

The record contains a letter from [REDACTED] stating that the applicant rented an apartment at [REDACTED], Brooklyn, from September 1981 until January 1992.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, none of the witness statements provides 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. For instance, the witnesses do not state how they date their initial meeting with the applicant, how frequently they had contact with the applicant, and how they had personal knowledge of the applicant's presence in the United States during the requisite period. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have minimal probative value.

In addition, the record contains one letter from [REDACTED] and three letters from [REDACTED], both of the Basilica of Our Lady of Perpetual Help in Brooklyn, New York. The letter from [REDACTED] states that the applicant attends weekly services at the basilica and that the applicant originally came to the United States in 1981. The three letters from [REDACTED], dated May 7, 2004, May 12, 2006 and September 3, 2007, respectively, state that the letter of [REDACTED] is authentic and that the applicant attends weekly services.

The letters from [REDACTED] and [REDACTED] fail to conform to the regulatory standards for attestations made on behalf of an applicant by churches, unions, or other organizations, set forth at 8 C.F.R. § 245a.2(d)(3)(v). The attestations do not state the address where the applicant resided during his membership, establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period, establish the origin of the information being attested to, and indicate that the membership records were referenced or specifically state the origin of the information being attested to. Furthermore, [REDACTED] statement that the applicant originally came to the United States in 1981 does not indicate whether he has firsthand knowledge of this information. Therefore, the attestations are of minimal probative value.

The record contains an employment verification letter from [REDACTED] president of Empire Building Restoration, Inc., which states that the applicant has been working for the company since February 1988. This document would constitute evidence in support of the applicant's residence in the United States since February 1988. However, the employment verification letter fails to conform to the regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). The letter fails to declare whether the information was taken from company records, to identify the location of such

company records, and to state whether such records are accessible, or in the alternative state the reason why such records are unavailable. Lacking relevant information, the declaration fails to provide sufficient detail to verify the applicant's claim of continuous residence in the United States since February 1988. Furthermore, the applicant's employment with Empire Building Restoration since 1988 is not corroborated on his Form I-687, application for status as a temporary resident, filed in 2006, in which applicant states that he has been self-employed since 1981.² This discrepancy detracts from the credibility of the applicant's claim. 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. *See Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA 1988). Therefore, this document has minimal probative value.

The remaining evidence in the record is comprised of copies of airline tickets, copies of several postal receipts, the applicant's statements, and the following forms: a Form I-485 application to adjust to permanent resident status and the underlying Form I-130 petition for alien relative³; the instant Form I-485 application to adjust to permanent resident status under the LIFE Act; the initial Form I-687 application filed in 1993 to establish the applicant's CSS class membership, a second Form I-687 submitted in 1995, and a Form I-687 filed in 2006.

The applicant submitted an Aereo Mexico airline ticket and baggage check dated March 16, 1988 listing a trip from New York City to Mexico City. The applicant also submitted a copy of a Braniff airline ticket dated March 28, 1988 listing a trip from Los Angeles to New York City. These documents would provide some detail regarding the applicant's absence from the United States and the applicant's residence in the United States in March 1988. However, information on these tickets appears to have been erased and/or altered. Therefore these documents have minimal probative value.

In addition, the applicant furnished copies of Latin Express, Inc. postal receipts with dates of January and February 1988. Although these documents provide some detail regarding the applicant's residence in the United States in January and February 1988, they are insufficient to establish the applicant's residence during the entire requisite period.

Lastly, the AAO finds in its *de novo* review that the record of proceedings contains documentation that is materially inconsistent with the applicant's claim of residence in the United States since before January 1982. The record reveals that on October 15, 1997, the applicant filed a Form I-485 application to adjust to permanent resident status based on an underlying Form I-130 petition for alien relative. The applicant filed with that application two Forms G-325A, biographic information sheets, dated March 27, 1997 and August 4, 1997, respectively. The Form G325A requests applicants to list their last address outside the United States of more than one year. On both forms, the applicant stated that he resided in Biblian, Ecuador for many years until March 1988.⁴ The contradictions are material to the applicant's

² The applicant's initial Form I-687, filed in 1993 to establish the applicant's CSS class membership, and a second Form I-687 submitted in 1995 both list the applicant's employment with Empire Building from February 1988.

³ The applicant withdrew his marriage-based Form I-485.

⁴ Both forms are also inconsistent with each other: In the first G-325A, the applicant stated that he resided in Biblian, Ecuador from January 1978 until March 1988. In the second G325A, the applicant stated that he resided in Biblian, Ecuador from July 1955 until March 1988.

claim in that they have a direct bearing on the applicant's residence in the United States for the duration of the requisite period. As stated previously, 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*. 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.

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 various statements and affidavits 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 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.