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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 221 60328

Office: HOUSTON

Date: **APR 06 2010**

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.

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, Houston, 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 submitted original proof to the officer that interviewed him. Counsel submits additional evidence in support of the applicant's claim. Counsel requested a copy of the Record of Proceedings (ROP) under the Freedom of Information Act (FOIA). The record reflects that the request was completed on May 3, 2009.¹ 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

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

¹ NRC2007068638.

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

produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.12(f). 8 C.F.R. § 245a.2(d)(6).

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).

On May 9, 2002, the applicant filed a 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 (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 relevant documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and resided in an unlawful status during the requisite period consists of numerous postmarked envelopes, a certificate of title, two tax receipts, an employment letter and affidavits from eleven individuals claiming to know the applicant during the requisite period. The AAO has reviewed each document to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The record contains numerous postmarked envelopes addressed from the applicant to Mexico. Some of the postmarked envelopes contained in the record do not contain a discernible postmark date. The remaining postmarked envelopes are dated in 1981, February 1982, May 1983, April 1984, January 1985, September 1985, and February 6, 1987. There are also copies of postmarked envelopes, dated August 1983, July 1985, and May 1987. While this evidence indicates the applicant's presence in the United States periodically during the statutory period, it

is insufficient to establish the applicant's continuous residence for the duration of the requisite period.

The record contains a Texas certificate of title in the applicant's name, issued in October 1986. The record also contains two tax collectors' receipts for Texas, dated January 1986 and July 1987. The evidence provides probative value as evidence of the applicant's presence in the United States in 1986 and 1987.

The declaration from [REDACTED] states that the applicant was employed at [REDACTED] from July 1981 to October 1983 as a laborer. The declaration fails to fully conform to regulatory standards for letters from employers as stated in the regulation at 8 C.F.R. § 245a.2(d)(3)(i). The declarant failed to use company letterhead and state where records are located and whether the Service may have access to the records. The declaration will be given nominal weight as evidence in support of the applicant's claim.

The affidavit from [REDACTED] states that the applicant started playing baseball in 1982 and is still a member. The declaration does not conform to regulatory standards for letters from organizations as stated in the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The declaration failed to be signed by an official whose title is shown, state the address where the applicant resided during membership period, include the seal of the organization impressed on the letter or the letterhead of the organization, or establish the origin of the information being attested to. The declaration provides minimal probative value as evidence in support of the applicant's claim.

The record contains eleven affidavits from [REDACTED] and [REDACTED]. The affidavits are general in nature and state that the affiants have knowledge of the applicant's residence in the United States for all, or a portion, of the requisite period. These affidavits fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

None of the affidavits 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 have a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. 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. Upon review, the AAO finds that, individually and together, the witness statements do

not indicate that their assertions are probably true. Therefore, the affidavits provide minimal probative value.

It is noted that the record contains two Forms I-687, Application for Status as a Temporary Resident (Under Section 245A of Immigration and Nationality Act), both signed by the applicant. The applicant's Forms I-687 contain inconsistencies regarding the applicant's addresses of residence and employment during the requisite period. These inconsistencies bring into question the **credibility of the applicant's claim**. In his first Form I-687, the applicant stated that he resided at [REDACTED] from June 1980 to September 1988; whereas, in his second Form I-687, he stated that he resided at this address from 1981 to 1985. In his first Form I-687, he stated that he resided at [REDACTED] from September 1988 to the present; whereas, in his second Form I-687, he stated that he resided at a completely different address from 1985 to 1989.

It is also noted that in his first Form I-687, the applicant stated that he was employed at [REDACTED] from July 1981 to October 1983, a [REDACTED] from October 1983 to August 1986 and at [REDACTED] from August 1986 to September 1988. In his second Form I-687, the applicant stated that he was employed at [REDACTED] from March 1981 to December 1983 and at [REDACTED] from 1983 to 1987. He failed to mention ever being employed at [REDACTED]. These inconsistencies seriously detract from the credibility of the applicant's claim.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record contains no independent, objective evidence to explain the above inconsistency. The inconsistencies in the record, noted above, 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.

Based upon the foregoing, the documents submitted in support of the applicant's claim have been found to contain inconsistencies and to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. 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.

Beyond the decision of the director, it is noted that on January 16, 1988, the applicant was arrested and charged with *falsely claiming to be a United States citizen*. The record does not reflect the disposition of this charge.

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