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



**U.S. Citizenship  
and Immigration  
Services**

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FILE: [REDACTED]  
MSC-02-229-61923

Office: HOUSTON

Date: **APR 06 2010**

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 Houston 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. Specifically, the director found that the applicant failed to explain the discrepancies in his evidence and testimony.

On appeal, counsel for the applicant asserts that the evidence which the applicant 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 time period. Counsel for the applicant states that she will submit a brief within 30 days after the FOIA request is processed. The record reflects that the applicant's FOIA request, NRC2007068481, was processed on May 18, 2009. Counsel has not submitted a brief on appeal. The applicant has not submitted any additional evidence on appeal. 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.<sup>1</sup>

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).

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

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<sup>1</sup> 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 (9<sup>th</sup> 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).

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 and documents. 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] and [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 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 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 or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The affiants also do not state how frequently they had contact with the applicant during the requisite period. The affiants 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 record contains a statement of earnings from the Social Security Administration, listing earnings for the applicant in 1985, 1987 and 1988. Although this document is some evidence in support of the applicant's presence in the United States in 1985, 1987 and 1988, it does not establish the applicant's continuous residence in the United States for the duration of the requisite period.

The applicant submitted employment verification letters from [REDACTED] [REDACTED] in Houston and [REDACTED] with [REDACTED]. The employment verification letter of [REDACTED] states that he wrote a letter of recommendation for the applicant for [REDACTED], and the witness states that the applicant worked for [REDACTED] from 1981 to 1985. The undated employment verification letter from [REDACTED] states that the applicant worked for [REDACTED] as a server's assistant from 1985 for the duration of the requisite period.

The employment verification letters of [REDACTED] and [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 work duties, the number of hours or days he was employed, or the location at which he was employed. 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.

In addition, the employment verification letters of [REDACTED] and [REDACTED] are inconsistent with the testimony of the applicant. At the time of his interview on March 25, 2003, the applicant stated that he worked for [REDACTED] from February 1981 until 1983. Further, in an I-687 application, filed in 1995 to establish the applicant's CSS class membership, the applicant did not list any employment with T.G.I. Fridays during the requisite period.<sup>2</sup>

The remaining evidence in the record is comprised of copies of the applicant's statements, the I-485 application, and a Form I-687, application for temporary resident status filed in 1995 to establish the applicant's CSS class membership. The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding his absences from the United States during the requisite statutory period.

In statements dated on May 15, 1996 and January 31, 2001, the applicant stated that he had one absence from the United States during the requisite period, from May 1987 to June 1987. However, in the I-687 application and in a class member worksheet dated November 20, 1995, the applicant stated that he had two absences from the United States during the requisite period, from January 1982 to February 1982, and from May 1987 to June 1987.

These contradictions are material to the applicant's 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 above, 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.

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 a particular location and 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. 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.

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<sup>2</sup> In the I-687 application, the applicant stated that he worked for T.G.I. Fridays from April 1990 until at least the date of the application on November 20, 1995.

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 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.

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.