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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:

Office:

Date:

AUG 18 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 of the Harlingen 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 she entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, the applicant's representative asserts that the evidence which the applicant previously submitted establishes by a preponderance of the evidence that she continuously resided in the United States in an unlawful status for the duration of the requisite time period. The applicant's representative stated that she may raise additional issues after the applicant's FOIA request is processed. The record reveals that the applicant's FOIA request, [REDACTED] was processed on June 17, 1994. The record also reveals that the applicant's FOIA request, [REDACTED] was closed on December 1, 2008, for failure to comply. In addition, the record reveals that the applicant's FOIA request, [REDACTED] was processed on December 7, 2009, subsequent to which the applicant's representative has not raised any additional issues.

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 or she 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

¹ 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).

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. 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 she entered the United States before January 1, 1982, and that she 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 her 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 applicant has submitted witness statements from [REDACTED]

[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 her, 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 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 specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The witnesses do not state the addresses at which the applicant was residing 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.

In addition, [REDACTED] states that she and the applicant worked as full-time, live-in housekeepers for [REDACTED] from November 1981 for the duration of the requisite period. Further, [REDACTED] state that the applicant worked for [REDACTED] and [REDACTED] from September 1981 for the duration of the requisite period. However, the statements of these witnesses are inconsistent with the applicant's October 1, 2002 statement, in which the applicant states that she began working for [REDACTED] in October 1983. Due to these inconsistencies, the statements of the witnesses have minimal probative value.

The applicant has submitted an employment verification letter from [REDACTED] Lemmons of [REDACTED] who state that the applicant worked for them as a live-in housekeeper from September 1981 through the end of the requisite statutory period. However, the employment verification letter of these witnesses is inconsistent with the applicant's October 1, 2002 statement, in which the applicant states that she began working for [REDACTED] in October 1983. Due to these inconsistencies, the employment verification letter is of little probative value.

In addition, the employment verification letter from [REDACTED] does 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 letter fails to comply with the above cited regulation because it lacks 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 she was employed, or the location at which she 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 additional reasons, the employment verification letter will be given no weight.

The record contains a [REDACTED], [REDACTED] of the Spanish Congregation Raymondville of Jehovah's Witnesses, who states that the applicant was an active member of the congregation in 1982. However, the letter from [REDACTED] is inconsistent with the testimony of the applicant. In a Form I-687, application for status as a temporary resident, filed in 1992 to establish the applicant's CSS class membership, the applicant stated that she was a member of the Raymondville congregation from September 1981 through the end of the requisite period. In addition, in her October 1, 2002 statement, the applicant stated that she was a member of the Raymondville congregation beginning in June 1983. Further, in the I-485 application, the applicant stated that she was a member of the Raymondville congregation from 1984 through the end of the requisite period. Due to these inconsistencies, the statement of the witness will be given no weight. In addition, these inconsistencies 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*. 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.

Further, the witness statement does not meet the requirements set forth at 8 C.F.R. § 245a.2(d)(3)(v), which provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where the applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. This attestation fails to comply with the cited regulation. Therefore, this attestation is of little probative value.

The applicant has submitted copies of postmarked, stamped envelopes, letters and a receipt, which are dated from March 3, 1983 through November 10, 1983.

The record contains copies of postmarked, stamped envelopes, letters, receipts and a copy of the applicant's Guatemalan passport number 0119827, obtained from the Consulate General of Guatemala in Houston, which are dated from January 6, 1984 through December 10, 1984.

The applicant has submitted copies of postmarked, stamped envelopes, letters, bills, receipts and a check, which are dated from January 7, 1985 through December 5, 1985.

The record contains copies of checks, bills and receipts, which are dated from January 21, 1986 through December 6, 1986.

The applicant has submitted copies of postmarked, stamped envelopes, letters, bills receipts checks, which are dated from January 9, 1987 through December 18, 1987.

The record contains copies of a postmarked, stamped envelope, a bill, a receipt and a check, which are dated from January 30, 1988 through April 7, 1988.

The documents listed above are evidence in support of the applicant's residence in the United States for some part of 1983 through the end of the requisite period. However, while these 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, the I-687 application, a Form I-589, application for asylum, and a Form EOIR-40, application for suspension of deportation. The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding the dates of her residence and employment locations in the United States during the requisite statutory period.

In the I-687 application, dated July 30, 1992, the applicant stated that she last entered the United States in September 1981, and listed her residence address as Route 1 in Raymondville, Texas from September 1981 through the end of the requisite period. The applicant also listed employment as a [REDACTED] representative and with the [REDACTED] family in Raymondville, from September 1981 through the end of the requisite period.

In a Form EOIR-40, application for cancellation of removal, at number 16, the applicant stated that she resided at RR5 Box 2107 in Edinburg, Texas from September 1981 through the end of the requisite period. At number 40, the applicant listed her only employment during the requisite period [REDACTED]

In a statement dated October 1, 2002, the applicant stated that she worked as a live-in housekeeper for Pilar Weatherford in Brownsville, Texas from September 1981 for 2 years, moved to Lasara, Texas in 1983 for 7 months, and became a live-in housekeeper for Juanita Lemmons in Raymondville, Texas from October 1983 through the end of the requisite period.³

² The EOIR-40 is not signed or dated. The Immigration Judge heard the application and denied it on April 17, 1997.

³ In addition, in her October 1, 2002 statement, the applicant states that she did not begin selling Mary Kay Cosmetics until 1991. While outside of the requisite period, this inconsistency calls into question the veracity of the applicant's testimony regarding her continuous residence in the United States during the requisite period.

In a Form G-325-A, dated October 4, 2002, the applicant stated that she lived in Brownsville, Texas from 1981 to 1983 and in [REDACTED] Texas from 1983 through the end of the requisite period, but did not provide a street address for either residence location.

In a statement dated August 28, 2006, the applicant stated that she worked cleaning houses in Brownsville, Texas for the first several months after her arrival in the United States, and began working as a live-in housekeeper for [REDACTED] in November 1981 in Raymondville, Texas.

The applicant has failed to provide probative and credible evidence of her continuous residence in the United States for the duration of the requisite period. The many inconsistencies regarding the dates the applicant resided and worked at a particular location within 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). 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.

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 she 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 she maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

The record reveals that on April 17, 1997, the applicant's application for asylum was denied by the immigration judge. In addition, the immigration judge ordered the applicant to be removed should she not voluntarily depart by October 17, 1997, which date was subsequently extended to September 30, 2001 by the Board of Immigration Appeals (BIA). A Form I-205, warrant of removal/deportation, was issued on November 8, 2001, which remains outstanding.

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.