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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

L2

[Redacted]

FILE: [Redacted]

Office: NEW YORK

Date: **AUG 24 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

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

The director denied the application finding that the applicant's absence from the United States because his mother was sick in Ecuador was not brief, casual and innocent and interrupted the period of required physical presence in the United States.

A LIFE legalization applicant must show continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* Section 1104(c)(2)(B) of the LIFE Act. An absence during this period which is found to be brief, casual and innocent shall not break a LIFE legalization applicant's continuous physical presence. A brief, casual and innocent<sup>1</sup> absence means a temporary, occasional trip abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States. 8 C.F.R. § 245a.16(b).

The record indicates that in the applicant's statement dated July 3, 2001 and during the applicant's interview conducted September 28, 2007, he testified that he departed the United States on August 2, 1987 to go to Ecuador because his mother was sick and then returned to the United States on September 5, 1987 for an absence of 33 days. The applicant claimed on his initial and current Form I-687 applications that he was absent from the United States from August 2, 1987 to September 5, 1987. In an affidavit provided by the applicant's mother, [REDACTED] she states that she had surgery of her vesicle (close to her liver) and her son, [REDACTED] traveled to see her on or about the beginning of August, 1987 for about 30 days. Neither the applicant nor his mother provided any medical evidence of her illness to show that the applicant's absence was for a legitimate medical emergency. The applicant did refute the re-entry date of September 5, 1987, as he claimed in his response to the Notice of Intent to Deny (NOID) that he returned to New York City on September 5, 1987, after having stayed for about one week in the Los Angeles area. This contradicts his previous testimony taken on September 28, 2007 and his Form I-687 application. The AAO finds that the applicant has not shown that he maintained continuous physical presence in the United States.

The AAO finds that the application cannot be approved for another reason. The applicant has not established that he entered into the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period.

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<sup>1</sup> Brief, casual and innocent means a departure authorized by United States Citizenship and Immigration Services (USCIS) (formerly known as the "Service") (advance parole) subsequent to May 1, 1987 of not more than thirty (30) days for legitimate emergency or humanitarian purposes unless a further period of authorized departure has been granted in the discretion of the district director or a departure was beyond the alien's control. 8 C.F.R. § 245a.1(g).



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 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.* 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 petitioner 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, 431 (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.

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).

At issue in this proceeding is whether the applicant submitted sufficient credible evidence to meet his burden of establishing 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 documentation that the applicant submits in support of his claim to have arrived in the United States



before January 1, 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship written by friends and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant's eligibility.

On the applicant's class determination form and Form I-687 application and during his Form I-687 application interview, the applicant claimed that he entered the United States without inspection through Tijuana, Mexico into San Diego, California, on December 17, 1981.

The applicant submitted letters and one affidavit to establish his initial entry and residence in the United States during the requisite period. The affidavit from [REDACTED] and letters from [REDACTED]

[REDACTED] state that they have personally known and been acquainted with the applicant or have knowledge that he resided in the United States since the 1980's. The letters provide no other information about the applicant.

In totality, the letters and affidavit contained in the record do not include sufficient detailed information about the claimed relationship and the applicant's continuous residency in the United States throughout the requisite period. For instance, none of the witnesses supplies any details about the applicant's life, such as, knowledge about his family members, education, hobbies, employment or other particulars about his life in the United States. The witnesses fail to indicate any other details that would lend credence to the claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period.

The affidavits do not provide concrete information, specific to the applicant and generated by the asserted association with him, which would reflect and corroborate the extent of this association and demonstrate that the affiants had a sufficient basis for reliable knowledge about the applicant during the time addressed in their letters and affidavit. 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. Therefore, the letters and affidavits have little probative value.

[REDACTED] of Bustamante Body and Fender, New York, New York, states in his letter that the applicant was employed as [REDACTED] from January, 1985 until November, 1988, and was also known as [REDACTED]. The employer attests to the applicant's good moral character but provides no other information about the applicant. Further, the regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. As the letter



does not meet most of the requirements stipulated in the aforementioned regulation, it will be given little weight.

and also assert in their letters that the applicant is also known by the name . . . The record also contains a letter from stating that traveled to Ecuador on August 2, 1987.

The regulation at 8 C.F.R. § 245a.2(d) states in pertinent part that:

(2) *Assumed names* - (i) *General*. In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that the applicant was in fact the person who used that name . . . The assumed name must appear in the documentation provided by the applicant to establish eligibility. To meet the requirements of this paragraph documentation must be submitted to prove the common identity, i.e., that the assumed name was in fact used by the applicant.

(ii) *Proof of common identity*. The most persuasive evidence is a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description. Other evidence which will be considered are affidavit(s) by a person or persons other than the applicant, made under oath, which identify the affiant by name and address, state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to affiant under the assumed name in question will carry greater

In the instant case, the applicant has not submitted sufficient evidence to establish that and the applicant, are the same persons. and claim that the applicant used the name but the record contains no evidence such as a document issued in the assumed names that identifies the applicant by photo, fingerprint or detailed physical description. Further, there are some contradictions noted with regard to the applicant's testimony concerning his purchase of the Equatoriana airline ticket. In an interview regarding the applicant's eligibility for class membership (C.S.S. v. Thornburgh) on July 21, 1993, the adjudication officer's notes reveal that the applicant stated that when he purchased the airline ticket, he "invented" the name of He stated that he went to the airline without any document. Then he stated that he provided the airline with his own birth certificate. He finally stated that he had birth certificate. No evidence of record resolves this inconsistency. 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 petitioner submits competent 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The remaining evidence consists of a receipt dated December 1, 1981 bearing the name [REDACTED] and stating the address as [REDACTED]. However, the applicant claimed on his Form I-687 application that he resided at [REDACTED] in December, 1981.

The record shows that the AAO subsequently issued a notice to the applicant on June 29, 2010 to provide him with another opportunity to submit additional evidence. The applicant and his counsel failed to respond to the notice.

Considering all the evidence of record, the AAO finds that the applicant has not established that he resided in the United States for the requisite period. Given the lack of detail in the affidavit and letters, the applicant has failed to submit sufficient evidence to overcome the director's denial. The evidence calls into question the credibility of the applicant's claim of continuous unlawful residence in the United States throughout the requisite period. The evidence submitted is insufficient to establish the applicant's entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period as required under Section 1104(c)(2)(B) of the LIFE Act. The applicant also failed to show continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

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

