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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**

[Redacted]

L2

FILE:

[Redacted]

Office: LAS VEGAS

Date:

DEC 10 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.

[Redacted]

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 Las Vegas office and the decision is now before the 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 had continuously resided in the United States in an unlawful status for the duration of the requisite time period.

On appeal, counsel for the applicant asserts that the evidence which the applicant previously 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. The applicant also asserts that inconsistencies in the record, regarding the applicant's statement of the date of his initial entry into the United States, are as a result of ineffective assistance of the prior counsel. It is noted that any appeal based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him or her and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The applicant has not submitted any of the required documentation to support an appeal based on ineffective assistance of counsel. Counsel has submitted an additional affidavit from the applicant appeal. 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 entered the United States before January 1, 1982, and resided in continuous unlawful status since that date through May 4, 1988. 8 C.F.R. § 245a.15(a).

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

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).

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 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.

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 have minimal probative value.

The applicant has submitted a copy of a 1987 federal income tax return, and a copy of a 1987 W-2 form from Roma Huntington Beach. The W-2 form lists the applicant's address as [REDACTED] in Santa Ana. However, the address listed on the W-2 form is inconsistent with the testimony of the applicant in a Form I-687, application for status as a temporary resident, filed in 1990, in which the applicant does not list a residence on [REDACTED] during the requisite period. In addition, in the 1987 tax return, the applicant states that he is married and lists six children. However, the record contains a copy of the applicant's marriage certificate, which states that the applicant married in Mexico on January 6, 1989. Further, in the I-485 application the applicant states that he has only two children, and the record contains the birth certificates of the children, born in 1990 and 1996, respectively. Due to these inconsistencies, these documents will be given no weight.

The record contains a copy of a pay stub dated November 23, 1987. This document is some evidence in support of the applicant's residence in the United States for some part of 1987.

The applicant submitted a copy of a California identification card dated April 8, 1988. This document is some evidence in support of the applicant's residence in the United States for some part of 1988.

The applicant has submitted a copy of a 1988 federal income tax return, and a copy of a 1988 W-2 form from [REDACTED]. However, the applicant did not list this company as an employer in the I-687 application filed in 1990. In addition, the tax return lists the applicant's address as [REDACTED]. However, the address listed on the tax return is inconsistent with the testimony of the applicant in the I-687 application, in which he does not list a residence on Stanford Street during the requisite period. Due to these inconsistencies, these documents will be given no weight.

While some of the above 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 and a Form I-687, application for status as a temporary resident, filed in 1990 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 the date of his initial entry into the United States and the dates of his absence from the United States during the requisite period.

In the I-687 application filed in 1990, the applicant listed residences in Santa Ana beginning in September 1981. The applicant listed one absence from the United States during the requisite period, from July to August 1987.

In a class member worksheet filed contemporaneously with the I-687 application, the applicant listed the date of his first entry into the United States as September 1981, and date of his absence from the United States as July 1, 1987 to August 3, 1987.

At the time of an interview on October 2, 1997, and at the time of a deposition given on December 4, 1998, the applicant stated that he first entered the United States on August 1, 1987. The record contains a Form EOIR-42B, application for cancellation of removal. At numbers 17, 19, 20, 21 and 24, the form states that the applicant first entered the United States without inspection at San Ysidro, California on August 1, 1987.²

The record contains a Form G-325A, biographic information sheet, dated December 15, 1997. The G-325A requests applicants to list their last address outside the United States of more than one year. On the form the applicant stated that he resided in Las Morelos, Mexico from December 1961 until August 1987.

The 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 in the applicant's testimony regarding the date of his first entry into the United States, as well as the dates of his absence from the United States during the requisite period, 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). 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.

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.

² The EOIR-42B is not signed or dated. The Immigration Judge heard the application and denied it on December 4, 1998.

The various statements 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 record reveals that on October 2, 1997, removal proceedings were initiated against the applicant, pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (Act), as amended, as an alien present in the United States without permission. On December 4, 1998, the Immigration Judge ordered the applicant to be removed should he not voluntarily depart by February 2, 1999, which date was subsequently extended to April 16, 2002, by the Board of Immigration Appeals (BIA). The applicant did not voluntarily depart the United States.³

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.

³ The record also reveals that the applicant has admitted to having used a fraudulent social security number. The AAO notes that an individual who wrongfully uses or misrepresents a social security number may face civil and/or criminal penalties. *See* 8 U.S.C. § 1324c and 42 U.S.C. § 408(a)(7). However, the Ninth Circuit, the jurisdiction in which this case arises, has held that a conviction for using a fake social security number does not constitute a crime involving moral turpitude. *See Beltran-Tirado v. INS*, 213 F.3d 1179 (9th Cir.2000).