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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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[redacted]

FILE: [redacted] Office: GARDEN CITY Date: JAN 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 Garden City 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.

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 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. [1]

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).

The regulation at 8 C.F.R. § 245a.15(c) provides, in relevant part, that an alien shall be regarded as having resided continuously in the United States if:

> (1) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982 and May 4, 1988 unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

The application must also be accompanied by evidence establishing an alien's continuous physical presence in the United States from November 6, 1986, through May 4, 1988. 8 C.F.R. § 245a.16(a). For purposes of this section, an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States. Brief, casual and innocent absences means temporary, occasional trips abroad as long as the purpose of the absence from the U.S. was consistent with the policies reflected in the immigration laws of the United States. 8 C.F.R. § 245a.16(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

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

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 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, in part, 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], [redacted] and [redacted][2] 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 declarations must do more than simply state that an 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 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 witnesses also do not state how frequently they had contact with the applicant during the requisite period. They 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, the record contains a letter from [redacted] of the Incarnation Rectory in New York. The witness states that the applicant has been a member of the church since April 1985. However, the applicant failed to list his membership in the church or any other religious organization on a Form I-687, application for status as a temporary resident, filed in 2005.[3] At part 31 of the application where applicants are asked to list their involvement with any religious organizations, the applicant did not list any organizations. This is an inconsistency which is material to the applicant's claim in that it has 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

[2] One of witness statements and one of [redacted] witness statements are almost identical.

[3] The applicant's initial Form I-687, filed in 1992 to establish the applicant's CSS class membership, lists the applicant's membership in the New York church.

evidence offered in support of the application. *Matter of Ho, supra.* This contradiction undermines 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.

More importantly, the letter 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: 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 an employment verification letter from [redacted] of [redacted], in New York, who states that the applicant worked for his grocery store from January 1982 for the duration of the requisite statutory period, although the witness does not state the nature of the applicant's employment.

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 witness does not state the applicant's job title, his daily duties, what hours or days he was employed, or the location at which he was employed. Furthermore, the witness does not state how he was able to date the applicant's employment. It is unclear whether he referred to his own recollection or any records he may have maintained. Finally, the applicant does not list employment with [redacted]. in the I-687 application filed in 2006.[4] In that application, the applicant states that he was self-employed for the duration of the requisite statutory period, although he does not state the nature or location of any periods of self-employment. For these reasons, the employment verification letter is of little probative value.

[4] The applicant's initial Form I-687, filed in 1992 to establish the applicant's CSS class membership, lists the applicant's employment as a clerk with [redacted] from January 1982 for the duration of the requisite statutory period.

The applicant has submitted copies of four photographs of himself and his family with a handwritten notation that the photographs were taken on September 21, 1986 at the Bronx Zoo. These photographs are some evidence in support of the applicant's physical presence in the United States on September 21, 1986.

The record contains a copy of the vaccination record of the applicant's daughter, which reveals that the child received a BCG vaccination some time in 1986. However, since the vaccination record does not state that this vaccination was administered in the United States, this document has minimal probative value.

The applicant has submitted one original envelope and copies of three postmarked, stamped envelopes. However, the probative value of these envelopes is limited in that the postmark dates of the three copied envelopes are not legible, and the postmark on the original envelope is not within the requisite period. For these reasons, the stamped envelopes do not establish the applicant's continuous residence throughout the requisite period.

The record contains a letter from who states that he has examined the applicant at routine medical visits from June 1987 for the duration of the requisite period, although the doctor does not attach any medical records to support his testimony. The applicant has also submitted a copy of a report for a medical test performed on June 3, 1987. In addition, the applicant has submitted the birth certificate of his second child, born on June 10, 1987. These documents are evidence in support of the applicant's physical presence in the United States in June 1987.

The record contains the Alien Resident Identification Card of the applicant's father, dated May 17, 1957. The record also contains a Continuation of Standard Work Contract dated September 12, 1964 regarding the applicant's father. Since the applicant was not born until August 27, 1965, these documents are not relevant to the issue of the applicant's continuous residence in the United States during the requisite statutory period.

The remaining evidence in the record is comprised of the applicant's marriage certificate, copies of the applicant's statements, the I-485 application, the initial I-687 application filed in 1992 to establish the applicant's CSS class membership, and a second I-687 application filed in 2005. The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding his employment in and absences from the United States during the requisite statutory period.

In the I-687 application filed in 2005, the applicant states that he was self-employed from September 1981 for the duration of the requisite statutory period, although he does not state the nature or location of his self-employment. However, in the initial I-687 application, the applicant lists employment as a clerk with [redacted] in New York from January 1982 for the duration of the requisite statutory.[5]

[5] In the initial I-687 application, the applicant does list a period of self employment from May 1989 until at least the date of filing the application in 1992.

Regarding the applicant's absences from the United States, at part 32 of the I-687 application filed in 2005, and at part 35 of the initial I-687 application, the applicant was asked to list his absences since his entry. In the second I-687 application, the applicant listed one absence from the United States during October 1987. In the initial I-687 application and in a class member worksheet dated May 27, 1992, the applicant listed one absence from the United States from October 10, 1987 to October 30, 1987. However, on October 3, 2006 the applicant testified that, after entering the United States on September 18, 1981, he departed the United States three times: in February 1984, August 1984 to September 10, 1984, and October 10, 1987 to October 30, 1987.[6]

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 resided 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. Nor does the testimony of the applicant on appeal resolve 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. 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.

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 on this basis.

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

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[6] The record contains a copy of the applicant's marriage certificate, which reveals that the applicant was married in Mexico on February 8, 1984. In addition, at an interview on October 3, 2006, the applicant stated that his first child was born on May 31, 1985, and that his wife came to the United States in 1986. Therefore, the applicant would have had to have been in Mexico an additional time in 1984 to conceive his first child.