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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:

MSC 02 143 62969

Office: LOS ANGELES

Date: **JAN 20 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, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish that he resided in the United States in a continuous, unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. Specifically, the director noted inconsistencies between some of the submitted evidence and the applicant's Form I-687, Application for Status as a Temporary Resident.

On appeal, counsel asserts that the contradictions are minimal and does not mean that the applicant was not truthful. Counsel contends that the applicant has met his burden of proof by preponderance of evidence through his applications, oral testimony and sufficient documentary evidence. Counsel requested a copy of the Record of Proceedings (ROP) under the Freedom of Information Act (FOIA). The record reflects that the ROP was completed on October 8, 2009.¹ No additional evidence was submitted on appeal. The AAO has 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.²

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 status under section 1104 of the LIFE Act must establish entry into 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 § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant 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

¹ NRC2009022795.

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

section 1104 of the LIFE Act. 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). 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.12(f). 8 C.F.R. § 245a.2(d)(6).

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 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.

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).

On November 18, 2001, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to section 1104 of the Life Act (I-485 LIFE Legalization Application). The issue in this proceeding is whether the applicant (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 1982 and resided in an unlawful status during the requisite period consists of copies of a school certificate, a tax return, a social security earning statement, a marriage certificate, a receipt, employment letters and postmarked envelopes, as well as attestations from individuals claiming to know the applicant during the requisite period. The AAO has reviewed each document to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The record contains the following evidence in support of the applicant's residence in the United States from 1984 through 1988: a copy of a Bellflower Adult School certificate of attendance, dated June 20, 1984; a copy of a Form 1040 U.S. Individual Income Tax Return for 1985; a copy of a Social Security Administration statement indicating that the applicant earned income in the years 1985, 1986, 1987, 1988; and a copy of the applicant's marriage certificate in Los Angeles, dated July 12, 1985. Based on the above evidence, the AAO finds that the applicant resided in the United States from 1984 through 1988.

The issue now becomes whether the applicant has provided evidence to establish that he entered the United States prior to January 1, 1982, and has resided in the United States from such date through 1984. During his interview, the applicant claimed to have first entered the United States in June 1981. He stated that he did not leave the United States until April 1985. However, his testimony is inconsistent with a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act) in the record. In his Form I-687, the applicant stated that he last came to the United States on November 25, 1981, and he failed to list any absences from the United States. These inconsistencies cast doubt on the credibility of his claim. 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 during the requisite period.

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 applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record contains no independent, objective evidence to explain the above inconsistencies.

The record contains a copy of a Bellflower Unified School District receipt in the applicant's name, dated January 1, 1982. However, it is noted that the date appears to be in a different handwriting from the rest of the receipt. This discrepancy brings into question the veracity of the evidence in support of the applicant's claim.

The record contains three postmarked envelopes from applicant sent to Mexico. Only one of the three is legible.

The record contains two employment letters indicating that the applicant worked in the United States during a portion of the requisite period. Neither letter conforms to the regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). The employment letter from [REDACTED] fails to provide the applicant's address at the time of employment, 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. The employment letter from [REDACTED] fails to provide the applicant's address at the time of employment, 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. Lacking relevant details, the letters provide minimal probative value as evidence in support of the applicant's claim of residence during the requisite period. It is also noted that the applicant failed to mention working for either company in his Form I-687. This inconsistency further detracts from the credibility of the applicant's claim.

The record contains a church letter from [REDACTED] The declarant stated that the applicant has been a parishioner since 1981 and provided the applicant's former address. The declaration does not conform to regulatory standards for letters from organizations as stated in 8 C.F.R. § 245a.2(d)(3)(v). The declaration fails to establish how the author knows the applicant and establish the origin of the information being attested to. In addition, the declarant provided a former address for the applicant which the applicant failed to indicate he ever resided at in his Form I-687. This inconsistency further detracts from the credibility of the applicant's claim.

The record contains six attestations which are general in nature and state that the individuals have knowledge of the applicant's residence in the United States for all, or a portion, of the requisite period. These statements fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

None of the witness statements 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 have a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. 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.

In addition, while several of the attestations indicate that the applicant resided at specific places of residence during the requisite period, the applicant failed to mention that he ever resided at these places of residence in his Form I-687. [REDACTED] stated that the applicant resided at [REDACTED]

[REDACTED] from June 1981 to July 1982. [REDACTED] stated that the applicant resided at [REDACTED] from 1982 to 1984. It is also noted that this affidavit is not amenable to verification. [REDACTED] stated that the applicant resided at [REDACTED] from January 1984 to June 1985. None of these places of residence were listed on the applicant's Form I-68, or his Form G-325A Biographical Data. In fact, the applicant indicated that he resided at different places of residence for the time periods addressed. These inconsistencies seriously cast doubt on the veracity of the applicant's claim.

On appeal, counsel asserts that these are minor contradictions and it “does not mean the applicant did not live at both addresses or the applicant was not truthful”. However, without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value as evidence in support of the applicant’s claim.

Based upon the foregoing, the documents submitted in support of the applicant’s claim have been found to be inconsistent and to have minimal probative value as evidence of the applicant’s residence and presence in the United States for the requisite period. The applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.