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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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JUL 19 2010

FILE:  Office: HOUSTON Date:

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, Houston. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On April 12, 2002, the applicant filed an application for permanent resident status 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). The director denied the application because he failed to establish that he satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act and had not demonstrated eligibility for the waiver by being at least 65 years of age or developmentally disabled. On appeal, the applicant and his counsel stated that neither of them received the Notice of Intent to Deny (NOID). The AAO agreed. In a letter dated May 20, 2010, the AAO sent the applicant and his attorney a copy of the director's NOID dated January 23, 2008 and provided the applicant with the opportunity to respond to the director's NOID and to submit additional evidence regarding the applicant's eligibility for adjustment to permanent residence under the LIFE Act.

Under section 1104(c)(2)(E)(i) of the LIFE Act ("Basic Citizenship Skills"), an applicant for permanent resident status must demonstrate that he or she:

- (I) meets the requirements of section 312(a) of the Immigration and Nationality Act (8 U.S.C. 1423(a)) (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or
- (II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

Under section 1104(c)(2)(E)(ii) of the LIFE Act, the Attorney General may waive all or part of the requirements for aliens who are at least 65 years of age or developmentally disabled.

On appeal the applicant states that his application was denied because he failed on two separate occasions to submit evidence from his doctor describing his medical disability which might qualify him for an exception to the English skills requirement.

The record contains hospital records belonging to [REDACTED] who was born on April 5, 1960. The applicant was born on May 27, 1960. [REDACTED] who claims to be the applicant's brother, and [REDACTED] state in their affidavits that the applicant was also known as [REDACTED] and [REDACTED] respectively. The record reflects that during an interview the applicant claimed to have used the name [REDACTED]

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 nameThe 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 he is the same person as [REDACTED] or [REDACTED]. The applicant claimed during his Form I-485 LIFE interview that he was shot in the shoulder but the hospital emergency room records for [REDACTED] show that he was shot in his left cheek. 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. Therefore, the medical evidence of [REDACTED] is given no weight as evidence of the applicant's medical disability to speak English. The AAO finds that the applicant does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act.

The AAO also finds that the application cannot be approved because the applicant has not provided credible evidence to establish that he entered 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.

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).

The documentation that the applicant submitted 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, a letter from a former employer and other evidence. The AAO has considered all of the evidence relevant to the requisite period to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The applicant claims that he first entered the United States without inspection in September, 1978.

He submitted affidavits from [REDACTED] and [REDACTED] attesting to his inability to file an amnesty application. He submitted affidavits from [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] to establish his initial entry and residence in the United States during the requisite period. The affidavits all contain statements that the affiants either have personally known the applicant or know that the applicant resided in the United States since the 1980s.

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 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. Therefore, the affidavits have little probative value.

[REDACTED], manager of [REDACTED] states that the applicant was an employee for seven years but does not state the years that he was employed at the café. A second letter from [REDACTED] indicates that the applicant was employed there since February, 1992. The applicant has not shown that he was employed by [REDACTED] during the requisite period.¹

The applicant claimed on his Form I-687 application that he was employed by [REDACTED] from September, 1981, to September, 1985. He claimed during his interview that he used the name [REDACTED] but his signature does not match the signature on the identification card issued by [REDACTED]. The applicant has not submitted pay stubs, tax records, or other financial documentation or a verification letter that indicates that he worked for [REDACTED] as [REDACTED]. As noted above, the record does not establish that the applicant is the same person as [REDACTED]. See, 8 C.F.R. § 245a.2(d).

The remaining evidence consists of copies of envelopes. The probative value of the envelopes is limited because the postmark dates are not legible.

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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has not submitted evidence in response to the AAO notice dated May 20, 2010 to resolve the inconsistencies of record.

¹ Pay stubs from [REDACTED] indicate that the applicant worked for this company in 1997-1998.

The regulation at 8 C.F.R. § 245a.2(d)(6) states that, in order to meet the burden of proof in establishing eligibility for temporary residence status, an applicant must provide evidence of eligibility apart from his or her own testimony. The applicant has failed to qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act, and has not established the English skills requirement. Further, he has not provided sufficient credible documentation to meet his burden of proof in establishing by a preponderance of the evidence that he has resided in the United States for the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989). He is, therefore, ineligible for temporary resident status under section 245A of the Act.

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