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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED]
MSC-02-019-60294

Office: NEW YORK

Date: MAY 04 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:



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.

Elizabeth McCormack

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, New York. In a subsequent Service motion to reopen, the denial was withdrawn and the application reopened for further consideration. The application was again denied and the decision is now before the Administrative Appeals Office (AAO) on appeal.¹ The appeal will be dismissed.

The director denied the application, finding that the applicant had not provided credible evidence to establish that he had 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. Counsel states that the applicant has been living in the United States since 1981 and submitted affidavits from the individuals he has been able to locate as evidence. The applicant has submitted additional evidence on appeal.

Counsel requested a copy of the record of proceedings under the Freedom of Information Act (FOIA). The record reflects that the FOIA request was closed on June 4, 2009. (NRC2009023841).

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.

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).

¹ Following the director's second denial the applicant filed a motion to reconsider the decision. Motions to reconsider a proceeding are not permitted for permanent residence applications filed under section 245A of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255(a). See 8 C.F.R. § 103.5(b). Therefore, the AAO will treat counsel's motion to reconsider as an appeal.

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 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 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; however, the AAO will not quote each witness statement in this decision.

The applicant submitted affidavits from [REDACTED] and [REDACTED] to establish his initial entry and residence in the United States during the requisite period. The affiants generally attest to knowing that the applicant has been physically present and residing in the United States since the 1980’s. The affiants generally attest to the applicant’s good moral character, being friends and socializing with the applicant but provide no other information about the applicant.

The applicant claimed on his class determination form that he first entered the United States in September, 1981, through San Isidro, California. During his Form I-485 LIFE interview and in his affidavit, the applicant states that he entered the United States with his wife without inspection through San Isidro, California, in May, 1981, and stayed in Salinas, California, with his sister-in-law, [REDACTED], for a couple of weeks. They then moved to Chicago and lived with [REDACTED], and in late 1981, moved to [REDACTED] to the home of [REDACTED]. The

applicant states he and his wife returned to Mexico in November, 1981. The applicant explains that he returned to the United States right before his first child was born but the applicant claimed on his Form I-485 LIFE application that his first child was born on January 19, 1981. In early 1982, the applicant states that he moved to Plano, Illinois, but [REDACTED] states that in 1982, the applicant lived in his home at [REDACTED]

The applicant claimed on his Form I-687 application that his first residence in the United States was at [REDACTED], from May, 1981 to December, 1988. He claims to have first resided in Aurora, Illinois, in September, 1991 as [REDACTED], one of his admitted aliases. [REDACTED] who claims to be the applicant's former landlord, states that in 1981, the applicant resided at [REDACTED], until 1991.

The inconsistencies regarding the applicant's residences in the United States are material to the applicant's claim in that they have a direct bearing on the applicant's continuous 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. 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).

In totality, the affidavits contained in the record do not include sufficient detailed information about the claimed relationship and the applicant's continuous residence in the United States throughout the requisite period. For instance, the witnesses do not supply any details about the applicant's life, such as, knowledge about his family members, education, hobbies, 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 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.

The record reflects that the applicant was convicted on March 10, 2005 of falsely filing with the New York State Department of Motor Vehicles (NYS DMV) a vehicle registration/title

application (MV-82) in the name of [REDACTED], which is not his true name. The sentence that was imposed was a fine. The AAO will not address whether this offense is a crime of moral turpitude, as the petty offense exception would apply in any event. This criminal history does not render the applicant inadmissible to the United States.

An applicant applying for adjustment of status under this part has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245A of the Act. 8 C.F.R. § 245a.2(d)(5). In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The insufficiency of the evidence and the inconsistencies noted call into question the credibility of the applicant's claim to have entered the United States before January 1, 1982 and his continuous unlawful residence in the United States since such date and throughout 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. 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.