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

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[redacted]

FILE: [redacted] Office: IRVING Date: OCT 13 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 Irving 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.[1] 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.[2]

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 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

[1] The record reveals that the applicant's FOIA request, [redacted], was processed on April 12, 2010.
[2] 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).

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.

The record contains witness statements from the following witnesses: [redacted] (the applicant's cousin), [redacted] (the applicant's sister), [redacted], and [redacted] 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, their witness statements fail to 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 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 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 in the United States. They do not state how frequently they had contact with the applicant during the requisite period, nor do they specify those social gatherings, other special occasions or social events when they communicated with the applicant during that time. The witnesses 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.

The applicant has submitted an employment verification letter from [redacted], owner of [redacted] in Dallas, stating that the applicant was employed by the company from November 7, 1981 to December 20, 1983, although the witness does not list the applicant's job duties.

The applicant has submitted seven employment verification letters from representatives of the [redacted] in Texas. In a September 17, 2007 letter, [redacted], human resources director, states that she has known the applicant personally and professionally since 1986. In a September 25, 2007 letter, [redacted] states that the applicant worked for the hotel in Dallas from October 1984 through April 1986. The witness does not state the applicant's employment duties, nor the source of her information regarding the applicant's employment prior to when she met him in 1986. The remaining employment verification letters from representatives of the [redacted] are concerning [redacted][3]

The AAO finds that the applicant has not established he used the assumed name or alias of [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 name . . . .The assumed name must appear in the documentation provided by the

[3] [redacted] director of human resources, states that [redacted] worked for the hotel in Dallas from October 1984 through April 1986, after which time he worked for the hotel in [redacted], personnel manager, states that [redacted] worked for the hotel in Dallas from October 15, 1984 to April 8, 1986. In a May 15, 2000 letter, [redacted] states that [redacted] worked for the hotel in Plano as a banquet extra from April 21, 1986 through the end of the requisite period. [redacted], personnel manager, states that [redacted] worked for the hotel in Plano as a [redacted] from April 12, 1986 through the end of the requisite period. In a May 17, 2000 letter, [redacted] general manager, states that [redacted] worked for the hotel for 14 years.

> 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 weight.

The employment verification letters which the applicant submits concerning [redacted] fail to establish this name as an alias or an assumed name because they do not comply with the above cited regulation. For instance, the applicant has not submitted any documents issued in the assumed name which identify the applicant by photograph, fingerprint or detailed physical description. Further, the applicant has not submitted a statement of any witness with knowledge of the applicant's use of the assumed name. For these reasons, the applicant has failed to establish that he used the name [redacted] as an assumed name or alias, and any documents in that name will be given no weight.

The remaining employment verification letters of [redacted] and [redacted] do 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 letters fail to comply with the above cited regulation because they lack considerable detail regarding the applicant's employment. For instance, the witnesses do not state the applicant's daily work duties or the number of hours or days he was employed. Furthermore, the witnesses do not state how they 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 are of little probative value.

The record contains a lease signed by the applicant on January 25, 1986, listing the applicant's residence to be the [redacted] in Dallas. The lease also contains the names and signatures of three other tenants of the premises, including [redacted].

The applicant has submitted a copy of a retirement account statement from Continents Hotels in the name of [redacted] listing a date of hire of April 21, 1986. The applicant has also submitted copies of W-2 forms for 1986, 1987 and 1988 from the [redacted] in Plano, in the name of [redacted] In addition, the applicant has submitted copies of pay stubs from the [redacted] in Plano in the name of [redacted] dated from December 21, 1986 through May 1, 1988. However, as stated above, the applicant has failed to establish that he used the name [redacted] as an assumed name or alias. Further, the January 25, 1986 lease reveals that [redacted] was the applicant's roommate. Due to these inconsistencies, any documents in the name of [redacted] will be given no weight.

The record contains copies of two undated photographs. The persons in the photographs and the locations of the photographs have not been identified. Therefore, these photographs will be given no weight.

The remaining evidence in the record is comprised of copies of the applicant's statements, the I-485 application, a Form I-687, application for status as a temporary resident, filed in 1990 to establish the applicant's CSS class membership, and an additional I-687 application dated 1993. The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding his absences from the United States during the requisite statutory period.

In the I-687 applications, filed in 1990 and 1993, and in class member worksheets filed contemporaneously with those applications, the applicant listed his first entry into the United States as being in November 1981, and listed one absence from the United States in September 1987.

The record contains a Form I-213, record of deportable/inadmissible alien, and a Form I-862, notice to appear, both dated April 7, 2000, both listing the date of the applicant's last entry into the United States as June 1988 near Del Rio Texas.

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 dates of the applicant's employment at a particular location in the United States, as well as the dates of his absences 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. 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 AAO notes that on April 16, 1997, the applicant was charged with a violation of the Texas Penal Code, *Driving While Intoxicated – First Offense.* On June 5, 1997, the applicant pleaded guilty to the charge, a misdemeanor, and the court assessed the punishment at a fine of $750 and 90 days in the county jail. Also on that date, the court suspended sentence and placed the applicant on community supervision for 24 months. (Rockwall County Court, case number [redacted]). In addition, on March 20, 2000, the applicant was charged with a violation of section 49.04 of the Texas Penal Code (PC), *Driving While Intoxicated Enhanced Offence (Class A).* On June 29, 2000, the applicant pleaded *nolo contendere* to the charge, a misdemeanor, and the court assessed the punishment at a fine of $800 and 180 days in the county jail. Also on that date, the court suspended sentence and placed the applicant on community supervision for 24 months. (Denton County Court, case number [redacted].

The record reveals that on April 7 , 2000, removal proceedings were instituted against the applicant under 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 February 11, 2002, the immigration judge ordered the applicant to be removed should he not voluntarily depart by June 11, 2002. The applicant did not voluntarily depart the United States. On July 10, 2002, a Form I-205, warrant of removal/deportation was issued, which remains outstanding.

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.