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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: [REDACTED]
MSC-02-018-63970

Office: PHILADELPHIA

Date: SEP 07 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.

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 Philadelphia 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 she entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988. Specifically, the director found that the applicant's absence from the United States from March 19, 1982 until November 4, 1984 broke her continuity of residence in the United States.¹ In addition, the director denied the application, finding that the applicant is inadmissible on the basis of fraud/misrepresentation, for failing to reveal, in her I-485 application and at the time of her interview on February 17, 2004, her arrest and subsequent deportation proceedings.

On appeal, the applicant asserts that she was absent from the United States from 1982 to 1984 due to an emergent reason which prevented her timely return to the United States, that being an order of voluntary departure. The applicant asserts that her absence was brief, casual and innocent. In addition, she states that her failure to reveal her arrest and subsequent deportation proceedings, both in her application and at the time of her interview, was due to her inability to understand English. However, the AAO finds that the applicant had the necessary ability to understand English, since at the time of her interview on February 17, 2004, the applicant passed the test of her ability to understand, speak and read English, and waived the assistance of a translator.² Further, the applicant requests that she be permitted to file a waiver of inadmissibility for fraud/misrepresentation.³

On July 19, 2010, the AAO sent the applicant a follow-up communication, informing her that additional documentation was required in order to complete the adjudication of her appeal, and requesting that the applicant provide additional evidence. Specifically, the AAO requested that the applicant provide evidence that she entered the United States before January 1, 1982, and that she continuously resided in the United States in an unlawful status since such date and through May 4, 1988. In addition, the applicant was asked to submit evidence to establish that her return to the United States in 1984 was delayed due to an emergent reason that prevented her earlier return to the United States. The applicant has responded to the AAO's request. In rebuttal, counsel has submitted an additional statement from the applicant, and a brief. In addition, in rebuttal the applicant has submitted copies of six photographs, an attestation from a representative of Jesus Christ Tabernacle and two additional witness statements.⁴ The AAO has considered the

¹ The director also found that the applicant is not an NWIRP class member because she did not enter the United States prior to January 1, 1982 on a nonimmigrant visa.

² The applicant passed the test for the ability to write English in August 2004.

³ The applicant does not need AAO permission to file a Form I-690 application for waiver of inadmissibility.

⁴ The applicant has also submitted an additional photograph and two additional documents, which pertain to the applicant's residence 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 period, these documents shall not be discussed.

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.⁵

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that he or she 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).

An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceed 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. 8 C.F.R. § 245a.15(c)(1). If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that "emergent" means "coming unexpectedly into being."

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 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

⁵ 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).

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).

At the time of completing her I-485 application, the applicant stated that she last entered the United States, "1979-1984". At the time of her initial interview on the I-485 application, the applicant stated that she first entered the United States on October 25, 1979 in Miami. The record reveals that on July 17, 1980, the applicant was arrested, and on July 22, 1980 deportation proceedings were instituted against her. At a deportation hearing on August 4, 1980, the applicant was given until September 4, 1980 to voluntarily depart the United States. The period of voluntary departure was subsequently extended until March 19, 1982, at which time the applicant departed to Colombia. The record reveals that the applicant reentered the United States in Eagle Pass on November 4, 1984, and that deportation proceedings were instituted against her on November 5, 1985. The applicant failed to appear for a deportation hearing on April 22, 1985, and the proceedings were administratively closed. Therefore, the record indicates that the applicant had an absence from the United States of at least 961 days from March 19, 1982 to November 4, 1984. The applicant failed to reveal the arrest, the deportation proceedings, and her 1982 to 1984 absence at the time of her interview, in the I-485 application, and in a Form I-687,

application for status as a temporary resident, filed in 1990 to establish her CSS class membership.

In rebuttal to the AAO's correspondence, the applicant states that she was unable to return to the United States earlier as planned because she didn't have sufficient money for the return trip. However, since the applicant also states that she had very little money for the trip to Colombia, the applicant's financial difficulty in returning to the United States cannot be said to have arisen unexpectedly. In addition, the applicant states that her return was delayed because she suffered a partial stroke resulting in paralysis of the right side of her face. However, the applicant has not submitted any evidence in support of her assertion that she suffered a stroke which caused her to delay her return. As noted above, to meet her burden of proof, the applicant must provide evidence of eligibility apart from her own testimony, and in this case the applicant has failed to do so.

As stated above, continuous unlawful residence is broken if an absence from the United States is more than 45 days on any one trip unless return could not be accomplished due to emergent reasons. 8 C.F.R. § 245a.15(c)(1). "Emergent reasons" has been defined as "coming unexpectedly into being." *Matter of C*, 19 I&N Dec. 808 (Comm. 1988).

The applicant's admitted absence from the United States from March 19, 1982 to November 4, 1984, a period of more than 45 days, is clearly a break in any period of continuous residence she may have established. As she has not provided any evidence other than her own statement that it was her unexpected and sudden poor health that was the "emergent reason" for her failure to return to the United States in a timely manner, she 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. Thus, she is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act on this basis.

An additional issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she entered the United States before January 1, 1982, and that she 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 her 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 each witness statement 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 period, it shall not be discussed.

The applicant has submitted witness statements from [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, none of the witness statements provides concrete information, specific to the applicant and generated by the asserted associations with her, 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. For instance, the witnesses do not state how they date their initial meeting with the applicant, how frequently they had contact with the applicant, and how they had personal knowledge of the applicant's presence in the United States during the requisite period. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true.

The record contains two witness statements from [REDACTED] and one witness statement from [REDACTED] both of Jesus Christ Tabernacle, [REDACTED]. The witnesses state that the applicant has been a member of the church from 1979 through the end of the requisite statutory period.

However, the witnesses' statements do 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: (1) 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. These attestations fail to comply with the cited regulation. Therefore, these attestations are of little probative value.

The applicant has also submitted employment verification letters of [REDACTED]

The employment verification letter of [REDACTED] states that the applicant worked for the company from December 1979 to March 1982 as a floor worker.

The employment verification letter of [REDACTED] states that the applicant worked for the company from July 12, 1985 for the duration of the requisite period, although he does not describe her job duties.

The employment verification letters of [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 her daily work duties or the number of hours or days she was employed. Furthermore, the witnesses do not state how they were able to date her employment. It is unclear whether they referred to their own recollection or any records they may have maintained. Lacking relevant information, the letters regarding the applicant's employment fail to provide sufficient detail to verify the applicant's claim of continuous residence in the United States for the duration of the requisite statutory period. Therefore, these documents have minimal probative value.

The record contains a 1984 W-2 form which lists earnings with a company named [REDACTED]. [REDACTED] The W-2 form lists a residence address for the applicant on [REDACTED]. [REDACTED] The applicant does not list this employer or this residence address in a Form G-325A, biographic information sheet, filed with the I-485 application, or in the I-687 application. In rebuttal, the applicant states that she forgot to list this employer. Due to these inconsistencies, this document will be given no weight.

The applicant has submitted a New York Telephone bill dated March 10, 1987, and two money order receipts dated April 4, 1987 and July 17, 1987, respectively. The applicant has also submitted a copy of the birth certificate of her daughter, born on November 11, 1987. Further, she has submitted a stamped envelope addressed to her in New York with a postmark date of November 24, 1987. These documents are evidence in support of the applicant's residence in the United States for some part of 1987.

The applicant has submitted copies of six photographs of herself. Four of the photographs, dated 1979, 1980, 1981 and 1982, respectively, were taken at locations that have not been identified. Since these photographs cannot establish the applicant's presence in the United States during the requisite period, they will be given no weight. The remaining two photographs, dated 1980 and taken in New York, and dated 1986 and taken in Washington, D.C., are some evidence in support of the applicant's presence in the United States for some part of 1980 and 1986.

While the documents listed above indicate that the applicant resided in the United States for some part of the requisite period, considered individually and together with other evidence of record, they do not establish the applicant's continuous residence for the duration of the requisite period.

The remaining evidence in the record is comprised of the applicant's statements, the I-485 application and a Form I-687, application for status as a temporary resident, filed in 1990 to establish the applicant's CSS class membership.

The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding additional absences from the United States. In the I-687 application, the applicant states that during the requisite period she was absent from the United

States from June 12, 1987 to July 4, 1987. At the time of her initial interview on the I-485 application, the applicant stated that during the requisite period she was absent from the United States from September 20, 1984 to October 22, 1984, and from July 5, 1987 to July 30, 1987. The applicant's contradictions are material to her claim in that they have a direct bearing on the applicant's residence in the United States for the duration of the requisite period. No evidence of record resolves these inconsistencies. In rebuttal, the applicant states that she cannot explain 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. 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 evidence offered in support of the application. *Matter of Ho, supra.* The 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.

As stated previously, 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 the evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). Here, the applicant has failed to provide probative and credible evidence of her continuous residence in the United States for the duration of the requisite period. The applicant's evidence lacks sufficient detail, and there are material inconsistencies in the record.

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 she is eligible for the benefit sought. 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. Thus, she is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act on this additional basis.

Further, the application may not be approved as the evidence establishes that the applicant is inadmissible to the United States as one who has sought through fraud or misrepresentation to procure an immigration benefit under the Act. See Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). Any alien who, by fraud or willful misrepresentation of a material fact, seeks to procure (or has sought to procure, or has procured) a visa, or other documentation, or admission into the United States or other immigration benefit, is inadmissible. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). As stated above, the record reflects that reveals that on July 17, 1980, the applicant was arrested, and on July 22, 1980 deportation proceedings were instituted against her. At a deportation hearing on August 4, 1980, the applicant was given until September 4, 1980 to voluntarily depart the United States. The period of voluntary departure was subsequently extended until March 19, 1982, at which time the applicant departed to Colombia. The record reveals that the applicant reentered the United States in Eagle Pass on November 4, 1984, and that deportation proceedings were instituted against her on November 5, 1985. The applicant failed to appear for a deportation hearing on April 22, 1985, and the proceedings were administratively closed. The applicant failed to reveal the arrest and the deportation proceedings at the time of her interview, in the I-485 application, and in the Form I-687 application.

Based on the above, the AAO finds that the applicant sought through willful misrepresentation of her immigration history to obtain an immigration benefit. Section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i) permits the Secretary of Homeland Security to waive certain grounds of inadmissibility, including inadmissibility under section 212(a)(6)(C)(i) of the Act, "in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest." 8 C.F.R. § 245a.2(k)(2). Although this ground of inadmissibility is waivable, even if the applicant were to be granted a waiver she remains ineligible for failure to establish her continuous unlawful residence. The record indicates that the applicant has not filed a Form I-690, *Application for Waiver of Grounds of Inadmissibility*.

Therefore, based upon the forgoing, the applicant has not established continuous, unlawful residence in the United States from a date prior to January 1, 1982 through May 4, 1988. She has not established that she is admissible to the United States or that she has filed with the director a properly completed request for a waiver of the grounds of inadmissibility to which she is subject. The applicant is not eligible to adjust to permanent resident status under section 1104 of the LIFE Act for these reasons, with each considered as an independent and alternative basis for denial.

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