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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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[REDACTED]

FILE: [REDACTED]
MSC-02-243-66954

Office: HOUSTON

Date:

SEP 15 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 Houston 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 was ineligible for adjustment to permanent resident status, pursuant to section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (Act), as amended, 8 U.S.C. § 1182(a)(6)(C)(ii), as one who has knowingly misrepresented that she was a United States citizen.¹

On appeal, the applicant's representative asserts that the applicant never misrepresented herself as a United States citizen. In addition, counsel asserts that any statements by the applicant were not made for the purpose of securing admission into the United States, since the applicant was traveling within the United States when the statements were made.

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

Section 212(a)(6)(C) of the Act provides, in pertinent part:

(i) In General. —

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

(ii) Falsely claiming citizenship. —

(I) In general. —

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose

¹ There is an exception set forth at §212(a)(6)(C)(ii)(I), stating that in alien making such a representation shall not be considered to be inadmissible based on such representation, if: each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization); the alien permanently resided in the United States prior to attaining the age of 16; and, the alien reasonably believed at the time of making such representation that he or she was a citizen. The record does not contain any evidence from the applicant in support of this exception.

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).

or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

. . . .

The AAO agrees with the director's determination that the applicant's false claim to United States citizenship was made for a purpose or benefit under the Act. The record reveals that on July 9, 2006, the applicant was returning to Houston from Edinburg, Texas after visiting her son, when she was stopped at a United States border patrol checkpoint near Falfurrias, Texas for an inspection of her immigration status. The record contains the contemporaneous notes of the immigration inspector, which reveal that when the applicant was asked if she was a citizen of the United States she misrepresented that she was a United States citizen. The applicant misrepresented her citizenship status to gain admission into the United States.

Based on the above, the AAO finds that the applicant's false claim of United States citizenship renders her inadmissible under section 212(a)(6)(C)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii). See *Theodros v. Gonzales*, 490 F.3d 396(5th Cir. 2007)(respondent who admitted that his false claim to citizenship was made to obtain employment is inadmissible, since employment is a benefit or purpose under the Act); *Jamieson v. Gonzalez*, 424 F.3d 765 (8th Cir. 2005)(replying "U.S." to immigration officer's question at the border regarding citizenship or country is a false representation for the benefit of entry into the United States.) The AAO notes that aliens making false claims to United States citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. See Sections 212(a)(6)(C)(ii) and (iii) of the Act.

Based upon the forgoing, the applicant is inadmissible under section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for having made a false claim to United States citizenship. The applicant is, therefore, 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 meet her burden of establishing, by a preponderance of the evidence, that her claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true.

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 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 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 documentation that the applicant submitted 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 time 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.

In addition, [REDACTED] does not appear to have personal knowledge of the applicant's presence in the United States during the requisite period, because she states that she *was informed* that the applicant arrived in the United States in 1981. Further, none of the witnesses provides evidence that they were in the United States during the requisite statutory period. For these additional reasons, the witness statements will be given no weight.

The applicant has submitted receipts dated December 18, 1981, January 2, 1982, February 13, 1982, May 11, 1982, February 3, 1983 and July 2, 1984. The applicant has also submitted a medical appointment notice for the applicant's son for May 8, 1982. These documents are some evidence in support of the applicant's residence in the United States for some part of 1981, 1982, 1983 and 1984.

The record also contains a copy of an envelope with a postmark dated December 18, 1984, addressed to the applicant's ex-husband on [REDACTED]. However, in the I-687 application the applicant states that she lived at this address from January 1982 to March 1984. Due to this inconsistency, this document will be given no weight.

The applicant has submitted a vaccination record, and a copy of a vaccination record, both pertaining to her son [REDACTED] listing vaccination dates of April 12, 1985, June 11, 1985, August 12, 1985, September 18, 1986 and in August 1987. However, since there is no listing of who administered the vaccines or at what location, this document has minimal probative value.

The applicant has submitted two Philadelphia School District forms, Reports of Visit to Health Services, for her son [REDACTED], dated October 10, 1985 and November 21, 1985, respectively. These documents are some evidence of the applicant's residence in the United States for some part of 1985.

The applicant has also submitted a copy of an envelope with a postmark date of September 30, 1985, addressed to her on [REDACTED]. However, in the I-687 application, the applicant states that she lived at this address from September 1986 to December 1987. Due to this inconsistency, this envelope will be given no weight.

The applicant has also submitted an envelope and a copy of an envelope, each with a postmark date of November 26, 1986, addressed to her and her ex-husband, respectively, in Philadelphia. The record also contains a letter sent by her from Philadelphia with a postmark date of December 8, 1986. These documents are some evidence of the applicant's residence in the United States for some part of 1986.

The record contains school progress reports for first and second grade from Boone Elementary in Houston for the applicant's son [REDACTED] from the beginning of the school year of 1987 through the end of the requisite period. However, in the I-687 application, the applicant states that she was living in Philadelphia through December 1987. Due to this inconsistency, these documents will be given no weight.

The applicant has submitted a refund check from Southwestern Bell Telephone Company in Dallas dated March 11, 1988. This document is some evidence of the applicant's residence in the United States for some part of 1988.

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 her absences from the United States. In the I-687 application, the applicant listed the date of her initial entry into the United States as October 1981, and stated that during the requisite period she was absent from the United States on two occasions during the requisite period, in September 1984 and in August 1987, respectively. However, in a class member worksheet signed by the applicant on November 25, 1990, the applicant listed only one absence from the United States, in August 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. 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 finds 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.

The record reveals that on July 9, 2006, the applicant was charged with a violation of section 212(a)(6)(E) of the Act, *alien smuggling*, because she misrepresented that her travel companions, a sister and a cousin who had entered the United States illegally on July 7, 2006, were citizens of the United States. On August 27, 2007, the charge was dismissed.

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. In addition, the applicant is inadmissible under section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for having made a false claim to United States citizenship. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for the dismissal. The applicant is, therefore, not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act. on each of the grounds noted.

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