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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]

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FILE:

[REDACTED]

Office: LAS VEGAS

Date:

SEP 27 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 Las Vegas 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 is ineligible for adjustment to permanent resident status under the LIFE Act because she failed to establish that she resided in continuous unlawful status since before January 1, 1982 through May 4, 1988. *See* 8 C.F.R. § 245a.15(a).

On appeal, counsel for the applicant asserts that the evidence submitted by the applicant establishes by a preponderance of the evidence that she 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 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*

¹ The applicant also requests permission to file a Form I-817, application for family unity benefits, as the spouse of a legalized alien. The applicant does not need permission to file an I-817 application.

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).

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 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 one witness statement. The AAO has reviewed the document in its entirety to determine the applicant's eligibility; however, the AAO will not quote the 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 a witness statement from [REDACTED]. The statement is general in nature and states that the witness has knowledge of the applicant's residence in the United States for all of the requisite period.

Although the witness claims to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness's statement does not provide 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. To be considered probative and credible, witness statements must do more than simply state that a witness 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 witness does not state how she dates her initial meeting with the applicant or specify social gatherings, other special occasions or social events when she saw and communicated with the applicant during the requisite period. The witness also does not state how frequently she had contact with the applicant during the requisite period. The witness does not provide sufficient details that would lend credence to her claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness's statement does not indicate that her assertions are probably true.

In addition, [REDACTED] states that the applicant was employed by her father, [REDACTED] from December 1980 through the end of the requisite period. The witness states that the applicant was hired to perform housekeeping and yard work. The witness also states that after her father had a stroke he employed the applicant as live-in help, with the applicant residing with him at [REDACTED] California. The witness does not state for how long the applicant resided at her father's residence. However, the testimony of the witness is inconsistent with the testimony of the applicant in a Form I-687, application for status as a temporary resident, filed in 1989, in which the applicant does not list employment with [REDACTED] during the requisite period, and does not list his address as a residence during the requisite period. The applicant lists residences in Las Vegas from June 1981 through the end of the requisite period, and employment in Las Vegas from December 1981 through the end of the requisite period. Further, in a class member worksheet which the applicant signed on September 2, 1989, the applicant states that she first entered the United States in June 1981. Due to these inconsistencies, the witness statement will be given no weight.

The applicant has submitted an employment verification letter from [REDACTED] of Las Vegas, Nevada, who states that the applicant worked for her as a housekeeper from December 1981 through the end of the requisite statutory period. However, the employment verification letter of this witnesses is inconsistent with the testimony of the applicant the time of her interview on August 2, 2004, at which time the applicant states that she lived at the home of [REDACTED] from 1980 through the end of the requisite period, and did not move to Las Vegas until after the requisite statutory period. Due to these inconsistencies, the employment verification letter is of little probative value.

In addition, the employment verification letter from [REDACTED] does 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 letter fails to comply with the above cited regulation because it lacks considerable detail regarding the applicant's employment. For instance, the witness does not state the applicant's daily duties, or the number of hours or days she was employed. Furthermore, the witness does not state how she was able to date the applicant's employment. It is unclear whether she referred to her own recollection or any records she may have maintained. For these additional reasons, the employment verification letter will be given no weight.

The record contains a certified copy of the birth certificate of one of the applicant's children, born in Mexico on [REDACTED]. This document is inconsistent with the testimony of the applicant in the I-687 application that her only absence from the United States during the requisite period was in October 1987. 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*, 19 I & N Dec. 582, 591-592 (BIA).

The remaining evidence in the record is comprised of copies of the applicant's statements, the I-485 application and a Form I-687, application for status as a temporary resident, filed in 1989 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 the date of her initial entry into the United States, the dates of her residence and employment in the United States during the requisite statutory period, and the dates of her absences from the United States during the requisite statutory period.

In the I-687 application, the applicant listed residences in Las Vegas beginning from June 1981 through the end of the requisite period, and employment in Las Vegas from December 1981 through the end of the requisite period. The applicant listed one absence from the United States in October 1987. In a class member worksheet signed by the applicant on September 2, 1989 and filed contemporaneously with the I-687 application, the applicant states that she first came to the United States in June 1981.³

At the time of her interviews on June 10, 2004 and August 2, 2004, respectively, the applicant stated that she first entered the United States in 1980. At the time of her August 2, 2004 interview, the applicant stated that she worked as a housekeeper for [REDACTED], and lived at the

³ In the I-485 application, the applicant lists her date of last arrival to the United States as August 23, 1989. However, in the I-687 application, filed on September 6, 1989, the applicant states that she last came to the United States in October 1987. While outside of the requisite period, this inconsistency calls into question the veracity of the applicant's testimony concerning her continuous residence in the United States during the requisite period.

home of [REDACTED] from 1980 through the end of the requisite period. As stated above, [REDACTED] resided on [REDACTED] California.⁴

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 many inconsistencies regarding the date of the applicant's first entry into the United States, dates the applicant resided and worked at a particular location within the United States, as well as the dates the applicant was absent from the United States, 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). 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.

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 various statements currently in the record which attempt to substantiate the applicant's residence 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 she maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

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.

⁴ At the time of her interview on August 2, 2004, the applicant stated that some time after her initial entry into the United States in 1980, she returned to Mexico and resided there for 4 or 5 months. According to this version of the applicant's testimony, she was outside the United States for at least 120 days during the requisite statutory period, and is thus ineligible for the benefit. An applicant may not have been absent for more than 45 days in a single period in order to maintain her continuous residence, unless she establishes that her prolonged absence was due to an emergent reason. 8 C.F.R. § 245a.15(c)(1).