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Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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[REDACTED]

FILE: [REDACTED] Office: LOS ANGELES

Date: **SEP 28 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 Los Angeles 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, 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 submitted additional evidence on appeal. The AAO has considered the 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.<sup>1</sup>

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

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<sup>1</sup> 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]

[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.

Further, [REDACTED] states that the applicant resided with him from October 1979 at [REDACTED] although the witness does not state for how long the applicant resided with him at that address. 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 1993, in which the applicant did not list this address as a residence in the United States. Due to this inconsistency, the statement of this witness will be given no weight.

The record contains a copy of a union membership card dated November 1979. This document is some evidence of the applicant's residence in the United States for some part of 1979.

The applicant has submitted a copy of a union eyecare benefits membership card dated November 1980. This document is some evidence of the applicant's residence in the United States for some part of 1980.

The record contains copies of pay stubs from [REDACTED] from January 1981 to January 22, 1982. However, the years on the pay stubs appear to have been typed onto copies of the originals. Due to these inconsistencies, these documents have minimal probative value.

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 copies of the applicant's statements, the I-485 application, and a Form I-687, application for status as a temporary resident, filed in 1993 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 his residences in and his absences from the United States during the requisite statutory period. In the I-687 application filed in 1993, and in a class member worksheet filed contemporaneously with the

application, the applicant listed his first entry into the United States as being in 1978. He listed a residence on South Albany in Chicago from May 1978 for the duration of the requisite period. The applicant listed one absence from the United States, to travel to Mexico from May 8, 1987 to May 20, 1987.

In the I-485 application, the applicant listed the date of his last arrival into the United States as being in June 1979. In a G-325A, biographic information sheet, dated July 5, 2001 and filed contemporaneously with the I-485 application, the applicant stated that he was in Guadalajara, Mexico from 1977 to 1979. The G-325A also states that the applicant was married in Mexico in 1980.

In three additional Forms G-325A, dated December 12, 2002, May 14, 2004 and January 9, 2007, respectively, the applicant states that he was married in Mexico on January 3, 1980. The testimony of the applicant in the Forms G-325A is inconsistent with the testimony of the applicant in the I-687 application, in which he stated that he had only one absence from the United States, in 1987.

At the time of his interview on the I-485 application on September 11, 2002, the applicant stated that he first entered the United States on July 15, 1979. The applicant also stated that he left the United States in 1988 for 15 days to visit his mother.

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 his residence 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 June 3, 1991, the applicant was charged with one count of violating section 11350(a) of the California Health and Safety Code (H&S), *Possession of Narcotic, Controlled Substance*, and one count of violating 11550(a) (H&S), *Use/Under Influence of Controlled*

*Substance.* On July 3, 1991, the court ordered both charges diverted for completion of probation. On January 24, 1992 the applicant's diversion on both counts was terminated and the case was dismissed. (Los Angeles County Municipal, case number [REDACTED]) In addition, on January 31, 1994, the applicant was charged with one count of violating section 23152(a) of the California Vehicle Code (VC), *Under Influence of Alcohol/Drug in Vehicle*, and one count of violating 23152(b) (VC), *.08% More Weight Alcohol Drive Vehicle*. On February 10, 1994, the applicant pleaded *nolo contendere* to count two, a violation of section 23152(b) (VC), a misdemeanor, and was sentenced to three years of summary probation, one day in jail and a fine. Also on that date, the court dismissed the remaining count. (Los Angeles County Municipal, case number [REDACTED]) Further, on March 16, 1995, the applicant was charged with one count of violating section 23152(a)(VC), *Under Influence of Alcohol/Drug in Vehicle*, and one count of violating 23152(b) (VC), *.08% More Weight Alcohol Drive Vehicle*. On April 11, 1995, the applicant pleaded *nolo contendere* to count two, a violation of section 23152(b)(VC), a misdemeanor, and was sentenced to three years of summary probation, two days in jail, a fine and community service. Also on that date, the court dismissed the remaining count. (Los Angeles County Municipal, case number 95M03934.) Therefore, for purposes of applying for adjustment of status under the LIFE Act, the applicant stands convicted of two misdemeanor crimes involving DUI, which does not constitute an additional basis for denial of the application.

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.