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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

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Date: **APR 07 2011** Office: HOUSTON

FILE: 

IN RE: Applicant: 

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 Houston office, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On October 14, 2004, the director of the Houston office denied the I-485 application, finding that the applicant failed to establish that he satisfied the basic citizenship skills requirements. The applicant appealed the decision. The AAO remanded the matter to permit the director to issue a notice of intent to deny (NOID) the application. The AAO also stated that, if the director finds that the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act, the director shall evaluate whether the applicant has established eligibility for adjustment to temporary resident status pursuant to the regulation at 8 C.F.R. § 245a.6. On March 8, 2010, after the issuance of two NOID's, the director issued a new decision denying the application, finding that the applicant is ineligible for adjustment to permanent resident status under the LIFE Act because he failed to establish that he satisfied the civics requirement. The director did not evaluate whether the applicant has established eligibility for adjustment to temporary resident status pursuant to the regulation at 8 C.F.R. § 245a.6. On April 8, 2010, the applicant filed an appeal, through counsel, stating that he satisfied the basic citizenship skills requirements. The appeal is now before the AAO.

Firstly, the AAO agrees with the director that the applicant has not satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act, and it will not disturb the director's decision that the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act on this basis.

Under section 1104(c)(2)(E)(i) of the LIFE Act ("Basic Citizenship Skills"), an applicant for permanent resident status must demonstrate that he or she:

- (I) meets the requirements of section 312(a) of the Immigration and Nationality Act (8 U.S.C. 1423(a))(relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or
- (II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

Under section 1104(c)(2)(E)(ii) of the LIFE Act, the Attorney General may waive all or part of the requirements for aliens who are at least 65 years of age or developmentally disabled.

Since the applicant is neither 65 years old nor developmentally disabled, he does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act. Nor does he satisfy the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because he does not meet the requirements of section 312(a) of the Immigration and Nationality Act (Act). An applicant can demonstrate that he or she meets the requirements of section 312(a) of the Act

by “[s]peaking and understanding English during the course of the interview for permanent resident status” and answering questions based on the subject matter of approved citizenship training materials, or [b]y passing a standardized section 312 test . . . by the Legalization Assistance Board with the Educational Testing Service (ETS) or the California State Department of Education with the Comprehensive Adult Student Assessment System (CASAS).” 8 C.F.R. §§ 245a.3(b)(4)(iii)(A)(1) and (2).

In the alternative, an applicant can satisfy the basic citizenship skills requirement by demonstrating compliance with section 1104(c)(2)(E)(i)(II) of the LIFE Act. The “citizenship skills” requirement of the section 1104(c)(2)(E)(i)(II) is defined by regulation in 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3). As specified therein, an applicant for LIFE Legalization must establish that:

He or she has a high school diploma or general education development diploma (GED) from a school in the United States . . . 8 C.F.R. § 245a.17(a)(2), or

He or she has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance. The course of study at such learning institution must be for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and the curriculum must include at least 40 hours of instruction in English and United States history and government . . . 8 C.F.R. § 245a.17(a)(3).

Both 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3) specify that applicants must submit evidence to show compliance with the basic citizenship skills requirement “...either at the time of filing Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview”

The regulation at 8 C.F.R. § 245a.17(b) states that:

An applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the interview, shall be afforded a second opportunity after 6 months (or earlier at the request of the applicant) to pass the tests or submit evidence as described in paragraphs (a)(2) and (a)(3) of this section [8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3)]. The second interview shall be conducted prior to the denial of the application for permanent residence and may be based solely on the failure to pass the basic citizenship skills requirements.

Pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed three times in connection with his LIFE Act application, on September 19, 2003, October 12, 2004, and June 23, 2009, respectively. On each occasion, the applicant was unable to demonstrate a knowledge and understanding of United States history and government. The applicant did not provide evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1). The

applicant does not have a high school diploma or a GED from a United States school, and therefore does not satisfy the regulatory requirement of 8 C.F.R. § 245a.17(a)(2). Nor did the applicant provide, prior to or at the time of the second interview, evidence to demonstrate that he had attended or was attending a state recognized, accredited learning institution in the United States that provides a course of study for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) with curriculum including at least 40 hours of instruction in United States history and government as allowed under 8 C.F.R. § 245a.17(a)(3). The applicant provided two certificates, dated May 16, 2003 and March 9, 2006, respectively, from the Houston Community College System as evidence to demonstrate that he satisfied the English requirement by completing 40 hours of instruction in English, as allowed under 8 C.F.R. § 245a.17(a)(3). However, the applicant has not submitted evidence that he satisfied the civics requirement. The applicant submitted evidence that he was enrolled in a 32-hour course of civics instruction at Pueblo's Royal Christian School in Pasadena, Texas. The record does not show the number of hours of instruction he received. Furthermore, there is no evidence in the record demonstrating that Pueblo's Royal Christian School is a state-recognized, accredited learning institution.

On appeal, the applicant has submitted a certificate of completion, dated May 23, 2010, from Houston Community College, stating that the applicant has completed 60 hours of instruction in United States history and government. However, as stated above, the requirement that the applicant submit evidence demonstrating compliance with the basic citizenship skills requirement *prior to or at the time of the second interview* is a mandatory time frame, and clearly stated in the regulations at 8 C.F.R. § 245a.17(a)(3).

Therefore, the applicant does not satisfy either alternative of the "basic citizenship skills" requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act. Accordingly, the AAO will not disturb the director's decision that the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

However, as stated above, the director failed to consider the applicant's eligibility for adjustment to temporary resident status. The regulation at 8 C.F.R. § 245a.6 provides, in pertinent part:

If the district director finds that an eligible alien as defined at § 245a.10 has not established eligibility under section 1104 of the LIFE Act (part 245a, Subpart B), the district director *shall* consider whether the eligible alien has established eligibility for adjustment to temporary resident status under section 245A of the Act, as in effect before enactment of section 1104 of the LIFE Act (part 245a, Subpart A).

(Emphasis added).

Accordingly, because the director did not make a probative determination regarding whether the evidence submitted by the applicant establishes his eligibility for temporary resident status pursuant to the regulation at 8 C.F.R. § 245a.6, or inform the applicant of any deficiencies within the evidence, on March 7, 2011, the AAO sent the applicant a follow-up communication

informing him that additional documentation was required in order to complete the adjudication of his appeal, and requesting that the applicant provide additional evidence. Specifically, the AAO requested that the applicant provide evidence 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 throughout the requisite statutory period. In addition, the AAO requested that the applicant state whether his wife was in the United States during the requisite statutory period, and, if so, to list the date of her arrival to the United States and the date of any absences from the United States during the requisite period.

On appeal, counsel 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 two additional documents 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.¹

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. 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.2(d)(5).

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

¹The 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).

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).

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).

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 established that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status throughout the requisite period. 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. 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 witness 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, the witness statements do not 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 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 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, or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The witnesses also do not state how frequently they had contact with the applicant during the requisite period. 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.

In addition, in a November 11, 1991 statement, [REDACTED] states that from January 1987 through the end of the requisite period the applicant lived with him on Rusk in Houston. However, the testimony of the witness is inconsistent with the applicant's testimony in a Form G-325A, biographic information sheet, signed by the applicant on August 20, 2001, and inconsistent with the applicant's testimony in a Form I-687, application for status as a temporary resident, filed in 1991. In both the Form G-325A and the I-687 application, the applicant states that he resided on Rusk from November 1987 to May 1987, and does not list any address in the United States from June 1987 through the end of the requisite period. In addition, Santos Peña, the applicant's brother, states that from November 15, 1981 to December 1986, the applicant lived with him at 3611 Reid in Houston. However, the applicant does not list this address as a residence during the requisite period, either in the Form G-325A or in the I-687 application filed in 1991. Due to these inconsistencies, these witness statements will be given no weight.

The applicant has submitted employment verification letters from [REDACTED]

[REDACTED] a supervisor with Basic Constructors Inc. in Houston, states that the applicant worked for him as a laborer from January 1987 through the end of the requisite period, under the alias or assumed name of [REDACTED]. The AAO finds that the applicant has not established he used an assumed name or alias. 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 nameThe assumed name must appear in the documentation provided by the 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 letter of [REDACTED] fails to establish that the applicant used the name [REDACTED] as an alias or an assumed name because it does 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, other than the employment verification letter, 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 the employment verification of [REDACTED] will be given no weight.

[REDACTED] states that the applicant worked for her as a laborer from November 15, 1981 to December 20, 1986.

The employment verification letter of [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, the number of hours or days he was employed, or the location at which he 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 reasons, the employment verification letter is of little probative value.

The applicant has submitted a copy of a receipt from [REDACTED] showing installment payments made by the applicant from December 25, 1977 to August 13, 1978. The applicant has also submitted a marriage certificate which reveals that the applicant and his former spouse were married in Houston on August 27, 1978. These documents are some evidence in support of the applicant's residence in the United States for some part of 1977 and 1978.

While some of the above documents 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 1991 to establish the applicant's CSS class membership. However, 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 his continuous residence in the United States for the duration of the requisite period. The inconsistencies regarding the dates the applicant resided at a particular location in 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). 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 finds 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 record reveals that on August 30, 1979, under the name of [REDACTED] the applicant was convicted of illegally entering the United States, and was sentenced to 90 days in

jail and a suspended sentence of 5 years. (United States Immigration and Naturalization Service, BPSH, McAllen, Texas.) The record of those criminal proceedings is contained in administrative file A24 383 673.

The record also reveals that on August 11, 1979, deportation proceedings were initiated against the applicant, pursuant to section 241(a)(1)(B) of the Immigration and Nationality Act (Act), as amended, as an alien who entered the United States without inspection. On May 4, 1994, the Immigration Judge ordered the applicant deported to Mexico. On December 14, 1994, the Board of Immigration Appeals (BIA) dismissed the applicant's appeal. On January 24, 1996, a Form I-205, warrant of removal/deportation was issued, which remains outstanding. The record of those deportation proceedings is contained in administrative file A24 383 241.

Based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

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