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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

L2



FILE:



Office: OAKLAND PARK

Date:
FEB 18 2011

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.

A handwritten signature in black ink, appearing to read "Perry Rhew".

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 Oakland Park office and is now before the Administrative Appeals Office (AAO) on appeal.¹ 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, counsel for 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 period. On appeal, counsel states that he will submit a brief within 30 days. The record reveals that the applicant's FOIA request, number [REDACTED] was processed on May 28, 2009. Counsel has not submitted a brief on appeal. The applicant has not submitted any further evidence on appeal.

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

¹ The AAO notes that the director erroneously instructed the applicant to submit a Form I-694, Notice of Appeal, instead of a Form I-290B, Notice of Appeal. The AAO accepts the applicant's appeal on Form I-694.

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 period, it shall not be discussed.

The applicant has submitted a witness statement from a witness with the surname [REDACTED]. The statement is general in nature, and states that the witness has knowledge of the applicant's residence in the United States for the duration 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 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 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 he dates his initial meeting with the applicant in the United States, or specify social gatherings, other special occasions or social events when he saw and communicated with the applicant during the requisite period. The witness also does not state how frequently he had contact with the applicant during the requisite period. The witness does not provide sufficient details that would lend credence to his 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 his assertions are probably true.

The applicant has submitted employment verification letters from [REDACTED], a representative of [REDACTED] and [REDACTED] and [REDACTED] both representatives of Chateau Club Restaurant in Miami.

[REDACTED] states that the applicant worked for [REDACTED] from March 1981 to July 1983, although he does not provide any details regarding the applicant's employment duties.

[REDACTED] and [REDACTED] state that the applicant worked for [REDACTED] Restaurant in Miami from March 23, 1983 through the end of the requisite statutory period, although they do not provide any details regarding the applicant's employment duties.

The employment verification letters of [REDACTED], [REDACTED] and [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 the applicant's daily work duties, the number of hours or days he was employed, or the location at which he was employed. Furthermore, the witnesses do not state how they were able to date the applicant's employment. It is unclear whether they referred to their own recollection or any records they may have maintained. For these reasons, the employment verification letters are of little probative value.

In addition, the applicant failed to list any employment with [REDACTED] in a Form I-687, application for status as a temporary resident, filed in 1991 to establish the applicant's CSS class membership. Due to this inconsistency, this employment verification will be given no weight.

The record contains a witness statement from [REDACTED], pastor of [REDACTED], and a representative of [REDACTED], both of Miami. [REDACTED] states that the applicant was a member of the church and a volunteer with [REDACTED], from March 13, 1981 to July 1983.

The testimony of the witness is inconsistent with the testimony of the applicant in the I-687 application filed in 1991. At part 34 of the application, where applicants are asked to list their involvement with any religious organizations, although the applicant lists his association with [REDACTED], the applicant failed to list his membership at [REDACTED]. This is an inconsistency which is material to the applicant's claim in that it has a direct bearing on the applicant's residence in the United States for the duration of the requisite period. 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*. This contradiction undermines 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.

Further, the witness statement of [REDACTED] does 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. This attestation fails to comply with the cited regulation. Therefore, this attestation is of little probative value.

The record contains a copy of a certificate of registration from the District Court for the Province of Al Hoceima, Morocco. The certificate states that, since November 2, 1987, the applicant has been registered in the Ministry of Justice Trade Registry of Al Hoceima, Morocco as residing there and conducting commerce in wood there. In addition, the applicant submitted a copy of a certificate of profession, stating that the applicant was issued a Moroccan national identity card on October 23, 1986.² These documents are inconsistent with the testimony of the applicant in the I-687 application, filed in 1991, in which the applicant stated that his only absence from the United States during the requisite period was in June 1987. These contradictions are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States for the duration of the requisite period. 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

² The certificate also states that the applicant has held the position of First-Rank Carpenter in Morocco from 1965 through the date of the certificate on March 31, 1987.

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.³

The remaining evidence in the record is comprised of copies of the applicant's statements, the I-485 application, a Form I-687, application for status as a temporary resident, filed in 1991 to establish the applicant's CSS class membership, and a Form I-140, petition for alien worker, filed in 2001, listing the applicant as the beneficiary. The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding the date of his absences from the United States during the requisite period.

As stated above, in the I-687 application filed in 1991, applicant stated that his only absence from the United States during the requisite period was in June 1987. The applicant also listed June 1987 as the date when he last entered the United States. The applicant listed a residence in Miami from May 1981 through the end of the requisite period, and employment in Miami from March 1981 through the end of the requisite period.

In a statement dated December 8, 1990, the applicant stated that he first entered the United States in February 1981.

In the I-140 petition filed in 2001, the applicant's date of arrival into the United States is listed as October 31, 1989.

On November 2, 1986, at a hearing in exclusion proceedings before an immigration judge, the applicant listed two absences from the United States during the requisite statutory period, in 1986 and 1987, respectively.⁴

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 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

³ In addition, the applicant has submitted a certificate from the [REDACTED] stating that the applicant took a machinery course in Morocco in July 1989. The certificate is inconsistent with the testimony of the applicant in the I-687 application, filed in 1991, in which the applicant stated that he last entered the United States in June 1987. While outside of the requisite period, this inconsistency calls into question the veracity of the applicant's testimony regarding his continuous residence in the United States during the requisite period.

⁴ At the hearing in exclusion proceedings, the applicant also listed additional absences from the United States in 1992, 1993 and 1995, respectively.

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 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 July 22, 1999, the applicant was charged with a violation of the Florida motor vehicle code, *Disobey Stop/Yield Sign*, an infraction. On September 27, 1999, the charge was dismissed (North Satellite Courthouse, Parkland, Florida, case number [REDACTED]).

The record also reveals that on August 29, 1995, under the name [REDACTED] exclusion proceedings were instituted against the applicant based upon the applicant being inadmissible to the United States and excludable as an immigrant without an immigrant visa. See Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1182(a)(7)(A)(i)(I). On July 25, 1997, an immigration judge ordered that the exclusion proceedings be terminated.

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.