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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

[REDACTED]

FILE:

[REDACTED]

Office: DALLAS

Date:

FEB 24 2011

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 Dallas 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 she entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988. A review of the record reveals that the director did not clearly indicate what additional evidence the applicant was requested to provide. However, the director's error is harmless because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).<sup>1</sup>

On appeal, counsel for the applicant asserts that the evidence which the applicant previously submitted 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 period. The applicant has not submitted any further evidence on appeal.

On December 30, 2010, the AAO sent the applicant a follow-up communication.<sup>2</sup> Specifically, the AAO requested that the applicant provide a statement of all of her absences from the United States since her stated entry into the United States in 1978 throughout the requisite period, including the country to which she travelled and the purpose of the trip. The AAO also requested that the applicant provide additional evidence to document her absences from the United States, throughout the requisite period. The applicant did not respond to the AAO's request.

The AAO has 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.

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).

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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).

<sup>2</sup> Although the AAO's request referenced the applicant's appeal regarding a Form I-687, application for status as a temporary resident, the requested information is also relevant to the instant appeal.

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 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 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 record contains documents addressed to the applicant, concerning the purchase of a Dunkin' Donuts franchise, dated January 27, 1982, September 17, 1982 and September 23, 1982. The applicant submitted a statement from the Social Security Administration, stating that her social security number was issued on March 23, 1982. The applicant has submitted a Pennsylvania insurance identification card dated February 8, 1982. The record contains a copy of an application for a Pennsylvania learner's permit, signed by the applicant on or about April 2, 1982. The applicant has submitted a New York Life insurance policy statement dated August 5, 1982, and copies of medical bills dated November and December 1982. These documents are some evidence in support of the applicant's residence in the United States for some part of 1982.

The record contains copies of checking account statements for account numbers [REDACTED] and [REDACTED] with The Williamsburgh Savings Bank in Brooklyn. Statements for account number [REDACTED] list the applicant's residence from February 24, 1982 through September 4, 1982 on [REDACTED] and from October 5, 1982 to January 8, 1983 on [REDACTED]. In two Forms I-687, applications for status as a temporary resident, filed in 1989 and 2005 respectively, the applicant does not list a residence on [REDACTED]. Statements for account number [REDACTED] list the applicant's residence from August 2, 1982 to January 8, 1983 on [REDACTED]. The overlapping dates are incongruous. There are contradictions as to when and where the applicant resided. Further, the record contains copies of three checks signed by the applicant in June and October 1982, listing the applicant's residence in Dubois, Pennsylvania. The applicant has submitted vehicle registration cards dated June 25, 1982, and December 9, 1982, respectively, listing the applicant's residence in Dubois, Pennsylvania. These documents are inconsistent with the testimony of the applicant in the two I-687 applications, filed in 1989 and 2005, respectively, in which the applicant states that she only resided in Pennsylvania until February 1982. Due to these inconsistencies, these documents will be given no weight.

The record contains copies of checking account statements for account number [REDACTED] with The Williamsburgh Savings Bank in Brooklyn, from January 9, 1983 to November 9, 1983, and for account number [REDACTED] for February and March 1983. The applicant has submitted a copy of a lease for premises on [REDACTED] dated May 18, 1983. The applicant submitted several bills dated January, June, July, and September through December 1983. The record contains copies of documents dated June 1983 and October 1983, regarding the applicant's purchase of [REDACTED]. The applicant has submitted a letter dated August 1983 from Prudential Insurance Company. The record contains a mortgage disclosure statement and settlement sheet dated September 1983, and a check dated December 1983. These documents are some evidence in support of the applicant's residence in the United States for some part of 1983.

The applicant has also submitted a Pennsylvania insurance identification card dated February 8, 1983, listing the applicant's residence in Dubois, Pennsylvania. This document is inconsistent

with the testimony of the applicant in two I-687 applications, filed in 1989 and 2005, respectively, in which the applicant states that she only resided in Pennsylvania until February 1982. Due to these inconsistencies, this document will be given no weight.

The applicant has submitted copies of bills dated January through July 1984 and checks dated May, June, July, September and October 1984. The applicant has submitted a copy of a savings account booklet, listing transactions on the applicant's savings account with The Williamsburgh Savings Bank from August 2, 1982 to September 6, 1984. The applicant has submitted copies of a bank statement from Citibank account number [REDACTED] from September 7, 1984 to November 6, 1984. These documents are some evidence in support of the applicant's residence in the United States for some part of 1982 through 1984.

The applicant has submitted copies of checking account statements for account number [REDACTED] with The Williamsburgh Savings Bank from August 9, 1984 to November 8, 1984, listing the applicant's residence on [REDACTED]. The applicant has submitted copies of a bank statement from [REDACTED] for November 5, 1984, listing the applicant's residence in Dubois, Pennsylvania. These documents are inconsistent with the testimony of the applicant in two I-687 applications, filed in 1989 and 2005, respectively, in which the applicant states that only she resided in Dubois, Pennsylvania until February 1982, and on [REDACTED] from September 1983 to December 1984. Due to these inconsistencies, these documents will be given no weight.

The record contains copies of correspondence from New York Life Insurance Company dated January 20, 1985 and July 20, 1985. These documents are some evidence in support of the applicant's residence in the United States for some part of 1985.

The applicant has submitted copies of bank statements from Keystone National Bank account number [REDACTED] for January and February 1985, listing the applicant's residence as Dubois, Pennsylvania. The applicant has also submitted copies of correspondence from New York Life Insurance Company dated March 1, 1985, August 29, 1985, January 20, 1986 and March 3, 1986, listing the applicant's residence on [REDACTED]. These documents are inconsistent with the testimony of the applicant in two I-687 applications, filed in 1989 and 2005, respectively, in which the applicant states that she only resided in Dubois, Pennsylvania until February 1982, and does not list a residence on [REDACTED]. Due to these inconsistencies, these documents will be given no weight.

The applicant has submitted copies of two checks payable to her, dated May and June 1987. These documents are some evidence in support of the applicant's residence in the United States for some part of 1987.

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, a Form I-687, application for status as a temporary resident, filed in 1989 to establish the applicant's CSS class membership, and another I-687 application filed in 2005. The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding her residences in the United States and her absences from the United States during the requisite statutory period.

At the time of completing the I-687 application filed in 2005, the applicant listed residences in the United States beginning in December 1980 as follows: from December 1980 to February 1982 in Dubois, Pennsylvania; and, from March 1982 through the end of the requisite period in [REDACTED]. At number 32 of the application, where the applicant was asked to provide a list of her absences from the United States since the date of her initial entry into the United States, she stated that she has taken various trips since January 1982.

In a class member worksheet dated November 13, 1989, the applicant stated that she first entered the United States in 1978.

In the initial I-687 application, filed in 1989 to establish her CSS class membership, at part 35 the applicant stated that she has had various departures as shown in an attached passport. She listed residences in the United States as follows: from February 1981 to February 1982 in Dubois, Pennsylvania; and, from March 1982 to June 1987 in [REDACTED]. The applicant did not list any residence in the United States from June 1987 through the end of the requisite period.

In a supplemental statement filed with the initial I-687 application, the applicant stated that she first entered the United States with an Indian passport containing a visitor's visa. The applicant stated that she obtained a visitor's visa in 1981. She stated that in 1985 she received a British passport and turned in her Indian passport. She also stated that she left the United States in 1987, and that she again left the United States on or about April 15, 1988 to obtain an E-2 visa in London.

The records of United States Customs and Border Protection (USCBP) reveal that the applicant entered the United States on March 28, 1988 and departed the United States on April 19, 1988.

The record contains a copy of several pages of the applicant's British passport number [REDACTED] obtained in London on September 5, 1985. The passport reveals that the applicant obtained a visitor's visa in London on September 6, 1985. The passport also reveals that the applicant was in Portugal from August 24, 1986 to August 31, 1986. However, the passport copy is missing pages 14, 15 and any pages after page 19. The applicant has not produced a copy of the Indian passport with which she initially entered the United States, and she has not stated whether she retained a copy of that passport. The record does not contain a copy of any other passport with which the applicant traveled during the requisite period.

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 inconsistencies regarding the dates the applicant resided at a particular location in the United States and 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). 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 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.

The record reveals that on January 24, 2007, removal 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 (Act), as amended, 8 U.S.C. §1182(a)(7)(A)(i)(I). The status of those proceedings is not known.

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.