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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

PUBLIC COPY

[REDACTED]

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Date: **JUL 25 2011**

Office: HOUSTON

FILE: [REDACTED]

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 Houston 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. The director also denied the application because the applicant had failed to establish that he satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act. More specifically, the director denied the application because the applicant twice failed to pass a test demonstrating a basic knowledge of United States history and government and a basic understanding of ordinary English. On appeal, counsel asserts that the evidence previously submitted by the applicant 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. In addition, counsel asserts that any inconsistencies in the applicant’s testimony are due to psychological and neurological factors adversely affecting the applicant’s memory. The applicant has submitted a report from a neurologist on appeal.¹ 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.²

First, the AAO finds that the applicant has not provided sufficient evidence to substantiate his claim of psychological or neurological factors resulting in memory loss significantly affecting his ability to testify on his own behalf. The evidence provided is comprised of letters from a psychologist, [REDACTED], and a neurologist, [REDACTED], [REDACTED] stated that a test of the applicant’s overall memory ability revealed a *moderate* cognitive impairment, which the psychologist stated was *likely* caused by a history of seizures.³ The psychologist recommended a neurological examination to assess the cause of the applicant’s reported memory impairment. The neurologist, [REDACTED], noted in his examination that the applicant has not had seizures or medication for seizures for 31 years, and he did not relate the applicant’s memory complaints to his history of seizures. The neurologist stated that a test of the applicant’s overall memory ability revealed a *mild* cognitive impairment.⁴ He also found the applicant to be depressed. He recommended an MRI of the brain, a trial of an anti-depressant and a follow-up examination. The applicant has not submitted any further evidence on appeal. In addition, the record reflects that the applicant was examined by a designated civil surgeon on August 10, 2001 and August 8, 2008. Both of the reports of the civil surgeons, the Forms I-693 Reports of Medical Examination, state that the applicant did not have a Class A or

¹ The applicant had previously submitted a psychologist’s report, in response to the director’s notice of intent to deny (NOID) the 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).

³ The psychologist stated that the applicant attained a score of 20 on the Mini-Mental State Examination (MMSE), with the scale for moderate impairment being 11 to 20 (with 20 being the lowest level of moderate impairment).

⁴ The neurologist stated that the applicant attained a score of 25 on the Mini-Mental State Examination (MMSE), with the scale for mild impairment being 21 to 26 (with 26 being the lowest level of mild impairment), and the scale for normal being 27 to 30.

Class B physical or mental disorder.⁵ Further, at the time of his three interviews, on August 13, 2007, June 12, 2009 and June 26, 2009, respectively, applicant failed to assert that he suffered from memory loss or any other condition adversely affecting his ability to testify. Therefore, the AAO finds that the applicant has not provided sufficient evidence to substantiate his claim of psychological or neurological factors resulting in memory loss significantly affecting his ability to testify on his own behalf.

Next, 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.

The applicant, who was neither 65 years old at the date of filing the I-485 application, nor is developmentally disabled, 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).

⁵ Nor has the applicant submitted a Form N-648, Medical Certification for Disability Exceptions, asserting that he is eligible for an exception from the requirement of demonstrating basic citizenship skills under 8 C.F.R. § 245a.17(c), 8 C.F.R. § 312.1(b)(3) and 8 C.F.R. § 312.2(b) due to a medically determinable physical or mental impairment lasting more than 12 months, and cannot demonstrate an understanding of the English language and knowledge of the fundamentals of the history, and of the principles and form of government of the United States.

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 in connection with his LIFE Act application on August 13, 2007, and June 12, 2009. On August 13, 2007 and June 12, 2009, the applicant was unable to demonstrate a basic understanding of ordinary English, so as to be placed under oath, and a basic knowledge of United States history and government.⁶ 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

⁶ The applicant was thereafter interviewed on June 26, 2009 with the use of a Spanish-speaking translator.

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). This requirement is a mandatory time frame and clearly stated in the regulations at 8 C.F.R. § 245a.17(a)(3). On June 12, 2009, at the time of the second interview, the applicant provided documentation as follows: certificates of completion dated June 16, 2002, May 20, 2007, August 26, 2007 and November 11, 2007, respectively, and a letter dated July 31, 2007, from the Houston Community College as evidence to demonstrate that he satisfied the English and Civics requirements, as allowed under 8 C.F.R. § 245a.17(a)(3), by completing 176 hours of ESL and Citizenship instruction. However, the certificates do not indicate that the applicant was attending a course of study for one academic year, as prescribed in the regulation.

Thus, the applicant has not satisfied the basic citizenship skills for LIFE legalization under any of the three options set forth in the regulations. He did not pass either of his examinations of basic English language ability and knowledge of United States history and government, as required under 8 C.F.R. § 245a.17(a)(1). He did not provide a high school diploma or GED from a school in the United States, as required under 8 C.F.R. § 245a.17(a)(2). Nor did the applicant show, at the time of his second interview on June 12, 2009, that he had attended, or was attending, a state recognized, accredited learning institution in the United States, following a course of study which spans one academic year, as required under 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 on this basis.

Next, the AAO will examine whether the applicant has furnished sufficient credible that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988. 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 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. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each 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 record contains witness statements from the following witnesses:

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 duties, the number of hours or days he was employed, the location at which he was employed, or the applicant's address at the time of employment. In addition, [REDACTED] does not state how he was able to date the applicant's employment. It is unclear whether he referred to his own recollection or any records he may have maintained. Further, in his two employment verification letters, [REDACTED] stated that he was not related to the applicant. However, at the time of his interview on June 26, 2009, the applicant testified that [REDACTED] is his first cousin. For these reasons, the employment verification letters are of little probative value.

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, signed by the applicant on March 9, 1991 and filed to establish the applicant's CSS class membership, and an additional I-687 application signed by the applicant on December 23, 1993. 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 statutory period.

In the I-687 applications signed in 1991 and 1993, respectively, the applicant listed residences in the United States beginning from March 15, 1981 through the end of the requisite period, and employment in the United States from March 25, 1981 through the end of the requisite period.⁷ The applicant listed one absence from the United States during the requisite period, from May 2, 1987 to May 20, 1987.

At the time of his interview on June 26, 2009, the applicant listed two absences from the United States, in May 1987 for 17 or 18 days, and from December 29, 1987 to January 5, 1988.

In a Form EOIR-42B, application for cancellation of removal, at number 25, the form states that the applicant's only absence from the United States since the date of his first entry was from December 1988 to January 1989.⁸

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.

⁷ In the I-687 signed by the applicant in 1991, the applicant stated that he worked for [REDACTED] from February 1987 to June 5, 1990. In the I-687 signed by the applicant in 1993, the applicant stated that he worked for [REDACTED] from February 1987 to October 10, 1990. While outside of the requisite period, the inconsistency calls into question the veracity of the applicant's testimony concerning his continuous residence in the United States during the requisite period.

⁸ The EOIR-42B is not signed or dated. The Immigration Judge heard the application and denied it on May 10, 1999.

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 record reveals that on October 11, 1995, deportation proceedings were initiated against the applicant pursuant to section 241(a)(1)(B) of the Immigration and Nationality Act (Act), based upon the applicant having entered the United States without inspection.⁹ On August 24, 1999, the applicant was given 60 days to voluntarily depart the United States. On September 12, 2002, the Board of Immigration Appeals (BIA) administratively closed the deportation proceedings.

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 on this basis.

Therefore, based upon the foregoing, the applicant has failed to comply with the English and civics requirements of 8 C.F.R. 245a.3(b)(4)(i), and he 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 appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for the dismissal. The applicant is, therefore, ineligible for adjustment to permanent resident status under section 245A of the Act on each of the grounds noted.

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

⁹ In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA). The former section 241 of the Act was re-designated as section 237 by section 305(a)(2) of IIRAIRA.