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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**

**PUBLIC COPY**

[REDACTED]

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FILE:

[REDACTED]

Office: ATLANTA

Date:

**MAR 03 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 Atlanta office and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant had not established by a preponderance of the evidence that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel requests 30 days from the date of the processing of the applicant's FOIA request to submit a brief and/or additional evidence. The record reflects that the applicant's FOIA request, number [REDACTED], was processed on July 15, 2010. The record also reflects that the applicant's FOIA request, number [REDACTED] was processed on June 5, 2009. On appeal, counsel has not submitted a brief. The applicant has not submitted any further evidence on appeal. The AAO has considered the applicant's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.<sup>1</sup>

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that he or she entered the United States before January 1, 1982, and resided in continuous unlawful status since that date through May 4, 1988. 8 C.F.R. § 245a.15(a).

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. See 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic

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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).

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 and documents. 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 [REDACTED]

[REDACTED] The statements are general in nature, and state that the witnesses have knowledge of the applicant's residence in the United States for 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, or list an address where he resided during that 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.

The applicant has submitted an employment verification letter from [REDACTED] of Downtown L.A. Motors, in Los Angeles, who states that the applicant worked for the company from January 10, 1988 through the end of the requisite statutory period, although the witness does not provide any details regarding the applicant's job duties.

The employment verification letter from [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, the location at which he was employed, or his residence address at the time of his employment. Furthermore, the witness 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. For these reasons, the employment verification letter is of little probative value.

The applicant has submitted copies of 20 stamped envelopes with postmark dates in 1981 (one envelope), 1982 (two envelopes), 1984 (three envelopes), 1985 (three envelopes), 1986 (10 envelopes) and 1987 (one envelope). However, 7 of the envelopes list residence addresses for the applicant in Houston that are inconsistent with the testimony of the applicant in three I-687 Forms, applications for status as a temporary resident, filed in 2006, 2001 and 1993, respectively. Two of the envelopes postmarked in 1984 list the applicant's residence address [REDACTED]. One of the envelopes postmarked in 1985 list the applicant's residence address [REDACTED]. Four of the

envelopes postmarked 1986 list residence addresses for the applicant either on [REDACTED] or on [REDACTED]. However, in the three I-687 applications, the applicant failed to list a residence during the requisite period on [REDACTED]. Due to these inconsistencies, these 7 envelopes will be given no weight. The remaining 13 envelopes are some evidence in support of the applicant's residence in the United States for some part of 1981, 1982, and 1984 through 1987.

The record contains 5 pay stubs dated October 9, 1982, January 15, 1983, June 30, 1984, August 11, 1984 and September 22, 1984, respectively. These documents are some evidence in support of the applicant's residence in the United States for some part of 1982, 1983 and 1984.

The applicant has submitted a 1987 Texas identification card. This document is 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, the initial Form I-687, application for status as a temporary resident, filed in 1993 to establish the applicant's CSS class membership, and two additional I-687 applications, filed in 2001 and 2006, respectively.

The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding the dates of his absences from the United States during the requisite period.

In the I-687 application filed in 1993, and in a class member worksheet filed contemporaneously with the application, the applicant listed his initial entry into the United States as being in 1979.

In all three I-687 applications, the applicant listed residences and employment in Houston from 1980 through the end of the requisite statutory period. The applicant listed three absences from the United States during the requisite period, in April 1984, in February 1985 and from July to August 1987, respectively.

However, the record contains a copy of a marriage certificate that states that the applicant was married in Mexico on December 9, 1981. This document is inconsistent with the testimony of the applicant in the three I-687 applications, in which the applicant does not list an absence from the United States in 1981.

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, as well as the dates of his absences 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 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 May 4, 1982, using the alias [REDACTED] the applicant was charged with a violation of the Texas Penal Code, *theft \$20 - \$200*, a Class B misdemeanor. See Texas Penal Code Section 31.03. On May 7, 1982, the applicant pleaded guilty to the charge, and was sentenced to 10 days confinement in the county jail (County Criminal Court at Law No. 3, Harris County Texas, case number [REDACTED]). The AAO notes that a conviction for theft is a crime involving moral turpitude (CIMT).<sup>2</sup> An applicant who has been convicted of a CIMT is inadmissible, and therefore ineligible for permanent resident status. However, an alien with one CIMT is not inadmissible if he or she meets the petty offense exception, which requires that the maximum penalty possible for the crime of which the alien was convicted did not exceed imprisonment for one year, and that the alien was not sentenced to a term of imprisonment in excess of 6 months. 8 U.S.C. § 1182(a)(2)(A)(ii). The AAO finds that the applicant's misdemeanor conviction qualifies for the petty offense exception, since the maximum possible penalty for a Class B misdemeanor in Texas is six months. See Texas Penal Code, Section 12.22. In addition, the applicant was not sentenced to a term of imprisonment in excess of six months, but was sentenced to 10 days in the county jail. Therefore, the applicant's theft conviction is a CIMT and the petty offense exception applies in this case. Thus, the applicant's

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<sup>2</sup> Because the applicant's conviction occurred in Texas, the law of the Fifth Circuit Court of Appeals is applicable in defining a CIMT. The Fifth Circuit, like its sister circuits, has generally deferred to the Board of Immigration Appeals (BIA) in defining moral turpitude. The BIA has defined moral turpitude generally to encompass "conduct that shocks the public conscience as being inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general." See *In re Fualaau*, 21 I. & N. Dec. 475, 477 (B.I.A. 1996). Whether a crime is one involving moral turpitude depends on "the offender's evil intent or corruption of the mind." *In re Serna*, 20 I. & N. Dec. 579, 581 (B.I.A.1992). "[C]rimes in which fraud was an ingredient have always been regarded as involving moral turpitude." *Jordan v. De George*, 341 U.S. 223,232, 71 S.Ct. 703, 95 L.Ed. 886 (1951); See also *Omagah v. Ashcroft*, 288 F.3d 254, 260 (5th Cir.2002) ("In the wake of *Jordan*, the courts of appeals have interpreted 'moral turpitude' as including a wide variety of crimes that involve some fraud or deceit. In general, misdemeanor theft convictions are considered to be crimes involving moral turpitude and the Fifth Circuit has stated as much. See generally, *De Hoyos v. Mukasey*, 55 1 F.3d 339 (5<sup>th</sup> Cir. 2008).

theft conviction is not an additional basis to disqualify the applicant for permanent resident status. While the applicant's arrest is evidence in support of the applicant residing in the United States for some part of 1982, it does not establish the applicant's continuous residence for the duration of the requisite period.

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.