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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**

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FILE: [Redacted] Office: SACRAMENTO

Date:  
**MAR 07 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:

SELF-REPRESENTED

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 Sacramento office, and is now before the Administrative Appeals Office (AAO) on certification. The director's certified decision will be affirmed.

The director of the Missouri Service Center denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act, stating that the applicant was statutorily ineligible to adjust status under the provisions of the LIFE Act, because he had previously applied as a special agricultural worker under section 210 of the Immigration and Nationality Act (Act), as amended. The Administrative Appeals Office (AAO) found that the director had erred in his decision and withdrew the decision on this basis. Because the director did not make a probative determination regarding evidence submitted by the applicant, or inform him of any deficiencies within the evidence, the AAO remanded the matter to the director for further action and consideration. The director reopened the matter on motion, pursuant to 8 C.F.R. § 103.3(a)(2)(iii), for purposes of entering a new decision. On February 26, 2007, the director of the Sacramento office issued a new decision in which he denied the application, finding that the applicant was ineligible for adjustment to permanent resident status under the LIFE Act, based upon the applicant's sworn statement dated November 20, 2006, that he first entered the United States in March 1985. The director did not certify his decision to the AAO pursuant to the regulation at 8 C.F.R. § 103.4, as requested, but advised the applicant to file a Form I-290B, which he did. On January 4, 2011, pursuant to the regulation at 8 C.F.R. § 245a.2(r), the applicant was given notice of the certification of the decision to the AAO, and afforded the opportunity to submit a brief within 30 days from the service of the notice.

The applicant did not file a brief or other evidence with the AAO during the 33 days following the date of the January 4, 2011 notice of certification of the director's decision.

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.<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).

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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).

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 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]. 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 employment verification letters from [REDACTED] president of [REDACTED] California and [REDACTED] ranch manager at [REDACTED] in Chico, California.

[REDACTED] states that the applicant worked for [REDACTED] from July 10 through September 25, 1985, although the witness does not provide any details regarding the nature of the applicant's employment. In addition, [REDACTED] states that the applicant worked under the social security number of [REDACTED]. This social security number is inconsistent with a copy of the applicant's social security card, which shows his social security number to have been [REDACTED]. Due to this inconsistency, this employment verification letter is of minimal probative value.

[REDACTED] states that the applicant worked for [REDACTED] as a seasonal agricultural worker from April 10 to October 10, 1986 and from April 6 to at least July 21, 1987, the date of the witness's letter.

The employment verification letters of [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 witness statements do not state the applicant's daily duties, the number of hours or days he was employed, or his address at the time of employment. 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. Lacking relevant information, the letters regarding the applicant's employment fail to provide sufficient detail to verify the applicant's claim of continuous residence in the United States for the duration of the requisite statutory period. For these reasons, the employment verification letters are of minimal probative value.

The record contains pay stubs from California employers dated May 24, 1985 from [REDACTED] in Los Olivos, June 14, 1985 from [REDACTED] and [REDACTED], and July 17, 1985 from [REDACTED] respectively. However, the pay stubs from [REDACTED] contain a social security number for the applicant of [REDACTED]. As stated above, this social security number is inconsistent with a copy of the applicant's social security card, which shown his social security number to be [REDACTED]. Due to this inconsistency, the documents from [REDACTED] will be given no weight. The remaining documents are some evidence in support of the applicant's residence in the United States for some part of 1985.

The applicant has submitted pay stubs from [REDACTED] dated as follows: from April 7, 1986 to October 5, 1986; from April 6, 1987 to November 15, 1987; and, from March 23, 1988 to April 17, 1988. The record contains a W-2 Form for 1986 from [REDACTED], and the applicant's 1986 and 1987 California identification cards. Further, the applicant has submitted a copy of a statement of earnings from the Social Security Administration, listing earnings for the applicant for 1986, 1987 and 1988. These documents are some evidence of the applicant's residence in the United States for some part of 1986, 1987 and 1988.

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, and the I-485 application, the a copy of a Form I-687, application for status as a temporary resident, filed in 1989 to establish the applicant's CSS class membership.

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 initial entry into the United States and the dates of his absences from the United States during the requisite period.

In the I-687 application filed in July 1989, the applicant listed his initial entry into the United States as being in 1981. The applicant listed a residence in the United States from 1981 through the end of the requisite period in Gonzalez, California, and employment from 1985 through the end of the requisite period. The applicant did not list any absences from the United States during the requisite period.<sup>2</sup>

In a sworn statement dated November 20, 2006, the applicant stated that he first entered the United States in March 1985, and was absent from the United States every year from 1985 through 1988, from September/October to February/March of each year.

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 first entered 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.

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<sup>2</sup> In the I-687 application, the applicant listed one absence from the United States, from October to November 1988. However, in a class member worksheet dated July 15, 1989, filed contemporaneously with the I-687 application, the applicant listed one absence from the United States, from October to November 1989. 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

The record reveals that November 9, 1989, the applicant was arrested and charged with a violation of 18 U.S.C. section 546, *Attempted Entry into the United States with Fraud*, based upon the his trying to enter Nogales, Arizona from Mexico with what the applicant admitted was a fraudulent Form I-688, temporary resident card. Prosecution of the case was declined on that date, and the applicant was returned to Mexico. The AAO finds that the applicant has admitted to having sought to enter the United States on November 9, 1989 by fraud or willfully misrepresenting a material fact. See Section 212(a)(6)(C)(i) of the Act. Although this ground of inadmissibility is waivable, even if the applicant were to be granted a waiver he remains ineligible for failure to establish his continuous unlawful residence.

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.

**ORDER:** The director's certified decision dated February 26, 2007 is affirmed. The application is denied.