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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**

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FILE:



Office: ALBUQUERQUE

Date:

MAR 29 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.

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 Albuquerque 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.

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 submitted additional witness statements on appeal.

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.¹

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 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).

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 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 record contains witness statements from the following witnesses: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] (the applicant's brother), [REDACTED]
[REDACTED] (the applicant's niece) and [REDACTED] (the applicant's nephew).

The witness statements are general in nature, and state that the witnesses have knowledge of the applicant's residence in the United States for all, or 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 her, 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 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. The witnesses do not state the addresses at which the applicant was residing during the requisite 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.

In addition, in three statements, one undated and two dated July 15, 1993, and September 2, 2010, respectively, [REDACTED] states that the applicant resided with her, her sister and her mother in New Mexico from 1982 through the end of the requisite statutory period. However, the testimony of the witness is inconsistent with the testimony of the applicant in a statement dated December 2, 2003, in which the applicant stated that she lived with the witness's mother, [REDACTED], aka [REDACTED] from December 1983 until August 1985, when the applicant began residing with her brother in Santa Fe. Further, in a statement dated July 8, 1996, Mateo Ahumada (the applicant's brother) states that the applicant came to the United States in 1978. However, the testimony of the witness is inconsistent with the testimony of the applicant in her 2003 statement, in which she states that she first entered the United States in June 1979. Due to these inconsistencies, the testimony of these witnesses will be given no weight.²

The record contains school records and a letter from the [REDACTED] [REDACTED] stating that the applicant attended school from August 27, 1979 to May 21, 1982, for grades 6, 7 and 8. The record also contains a copy of an envelope with a postmark date of December 22, 1981, sent by the applicant from [REDACTED].³ These documents are some evidence in support of the applicant's residence in the United States for some part of 1979 through 1982.

² In addition, [REDACTED] (the applicant's brother and sister-in-law, respectively) stated that the applicant lived with them on [REDACTED] in Santa Fe from 1985 to 1988. However, in the I-687 application filed in 1993, the applicant stated that she lived at this address from August 1985 to October 1991. While outside of the requisite period, these inconsistencies call into question the veracity of the applicant's testimony concerning her continuous residence in the United States during the requisite period.

³ It appears that the stamp which used to be affixed to the envelope is missing.

The applicant has submitted a letter from [REDACTED], stating that the applicant opened an account with the company in March 1983, and a copy of a receipt from the company dated July 14, 1983. The applicant has also submitted a copy of a receipt containing her signature, which is dated April 16, 1983 from [REDACTED], in Albuquerque. These documents are some evidence in support of the applicant's residence in the United States for some part of 1983.

The record contains a copy of a receipt from [REDACTED], in [REDACTED] dated February 3, 1984. This evidence is some evidence in support of the applicant's residence in the United States for some part of 1984. The record also contains a copy of a receipt dated April 1984 which lists the applicant's address in [REDACTED] as [REDACTED]. However, the address listed on this receipt is inconsistent with information contained in a Form I-687, application for status as a temporary resident, filed by the applicant in 1993, where the applicant does not list this address as a residence during the requisite statutory period. Due to this inconsistency, this document will be given no weight.

The applicant has submitted a copy of the New Mexico vaccination record of her son [REDACTED] showing vaccinations administered on November 25, 1985, June 25, 1986, November 12, 1986, November 3, 1987 and January 3, 1988. The applicant also submitted a copy of two receipts dated 1987. These documents are some evidence in support of the applicant's residence in the United States for some part of 1985, 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, the I-485 application, and a Form I-687, application for status as a temporary resident, filed in 1993 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 her initial entry into the United States, and the dates she resided at particular locations in the United States during the requisite statutory period.

At the time of completing the I-687 application filed in 1993, the applicant stated that she first entered the United States in 1978. The applicant listed residences in the United States beginning in June 1979 as follows: from June 1979 to June 1982 in Whiteface, Texas; from June to December 1982 on [REDACTED]; from December 1982 to March 1985 on [REDACTED] from April 1985 to July 1985 on [REDACTED] and, from August 1985 through the end of the requisite period on [REDACTED]

In a statement dated December 2, 2003, the applicant stated that she first entered the United States in June 1979. The applicant also stated that from June 1982 to December 1983 she lived

on [REDACTED], and that from December 1983 to March 1985 she lived [REDACTED]

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 date the applicant first entered the United States, as well as the dates the applicant resided at a particular location in 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 December 16, 1991, using the name [REDACTED] the applicant was charged with a violation of New Mexico Statutes Annotated (NMSA) section 30-31-20, *Trafficking in Controlled Substances*, a felony. The court disposition of this case is not known. (Bernalillo County Metropolitan Court of New Mexico, case number [REDACTED]). The record also reveals that on May 26, 1995, the applicant was charged with a violation of section 14-16-2-6 A2H (NMSA), *Permissive Uses Accessory Use*, and section 66-8-126 (NMSA), *Failure to Obey Notice to Appear*. On July 5, 1995, the charges against the applicant were dismissed. (Bernalillo County Metropolitan Court of New Mexico, case number [REDACTED]). The record further reveals that on August 7, 1996, the applicant was charged with a violation of section 14-16-2-11A (NMSA), *Permissive Uses*. On November 26, 1996, the applicant pleaded not guilty, and the case was deferred. The court disposition of this case is not known. (Bernalillo County Metropolitan Court of New Mexico, case number [REDACTED]). Because the application will be denied on other grounds, the AAO will not request court dispositions for the applicant's 1991 and 1996 arrests.

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,

⁴ In an addendum to the I-485 application, the applicant states that this arrest for suspected drug trafficking was a case of mistaken identity, and that the charges were dropped.

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.