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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  
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Services

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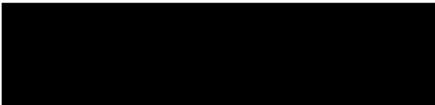


L2

Date: **MAY 12 2011**

Office: DETROIT

FILE: 

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 LIFE Act was denied by the Director, Detroit. A Notice of Certification was sent to the applicant on February 15, 2011, providing the applicant 30 days to submit a brief or other written statement to the Administrative Appeals Office (AAO). The applicant failed to submit a brief or other written statement after the Notice of Certification was issued. However, the applicant did submit a brief on appeal. The AAO will adjudicate the application based on the record. The director's decision to deny the application shall be affirmed.

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 throughout the requisite statutory period. The AAO notes that the director denied the application, finding that the applicant failed to establish having resided continuously in the United States in an unlawful status from January 1, 1982 through the date his application for adjustment under section 245A of the Immigration and Nationality Act was filed. The director incorrectly referred to section 245A of the Immigration and Nationality Act; the application was filed under section 1104 of the LIFE Act. 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).

On appeal, counsel asserts that the evidence which the applicant previously submitted 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. The applicant has submitted three additional witness statements on appeal. The AAO has considered counsel'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

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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).

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 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 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 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 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 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, [REDACTED] states that he recalls encountering the applicant during the period from 1984 to 1986 at [REDACTED] in Torrance, California, where the witness states he and the applicant worked. However, the testimony of the witness is inconsistent with the testimony of the applicant in a Form I-687, application for status as a temporary resident, filed by the applicant in 1990, and a Form EOIR-42B, application for cancellation or removal, in both of which the applicant did not list any employment with IDP during the requisite period.<sup>2</sup> Due to this inconsistency, the testimony of this witness will be given no weight.

The record contains three attestations from [REDACTED] stating that the applicant was a member of the church from 1981 to 1984. However, the applicant failed to list his membership in the Los Angeles church or any other religious organization in the I-687 application filed in 1990. At part 34 of the application, where applicants are asked to list their involvement with any religious organizations, the applicant did not list any organizations. This is an inconsistency which is material to the applicant's claim in that it has a direct bearing on the applicant's residence in the United States for the duration of the requisite period. As stated above, 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, supra*. This contradiction undermines the credibility of the applicant's

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<sup>2</sup> The EOIR-42B is not signed or dated. The Immigration Judge heard the application and denied it on March 22, 2005.

claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

More importantly, the attestations do not meet the requirements set forth at 8 C.F.R. § 245a.2(d)(3)(v), which provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where the applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. These attestations fail to comply with the cited regulation. Therefore, these attestations are of little probative value.

The record contains an airline ticket and baggage check issued to the applicant in Los Angeles on December 30, 1986. The record also contains a copy of a California identification card dated December 30, 1986, listing the applicant's residence as [REDACTED] in Venice, California. However, in the I-687 application filed in 1990, the applicant failed to list any residence on Washington Boulevard in Venice during the requisite statutory period. Due to this inconsistency, the identification card will be given no weight. The airline ticket is some evidence in support of the applicant's residence in the United States for some part of 1986.<sup>3</sup>

The applicant has submitted a copy of a statement from the Social Security Administration, stating earnings for the applicant in 1987. The statement 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, a Form I-687, application for status as a temporary resident, filed in 1990 to establish the applicant's CSS class membership, and a Form EOIR-42B, application for cancellation or removal.

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

In the I-687 application filed in 1990, the applicant did not list any employment in the United States during the requisite period.

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<sup>3</sup> The record also contains a copy of another airline ticket, but since date of issue is illegible this document will be given no weight.

In the Form EOIR-42B, application for cancellation or removal, the applicant listed employment from March 21, 1981 to March 21, 1987 as a handyman, and from March 21, 1987 through the end of the requisite period in a factory.

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 and worked at particular locations in the United States during the requisite period are material to his 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 removal proceedings were instituted against the applicant on August 30, 2001. These proceedings are pending.

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 April 6, 2010 decision to deny the application is affirmed.