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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

L2



Date: **MAY 19 2011**

Office: NEWARK

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 Legal Immigration Family Equity (LIFE) Act was denied by the director of the Newark 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, 1988.¹

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 not submitted any additional evidence 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.²

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

¹ In the notice of decision, the director states that the applicant did not respond to the notice of intent to deny (NOID) the application, issued on May 5, 2009. However, the record reflects that on May 29, 2009, counsel filed a rebuttal to the NOID. 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).

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).

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 the following witnesses:

_____ and _____ The statements are general in nature, and state that the witnesses have knowledge of the applicant's residence in the United States from all, or a portion of, the requisite statutory 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, with the exception of [REDACTED] and [REDACTED], where the applicant resided 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.

The applicant has submitted an employment verification letter from [REDACTED] of [REDACTED] in Long Branch, New Jersey. [REDACTED] states that the applicant worked for [REDACTED] from 1984 to 1986, although he does not state what the applicant's job duties were.

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, or the location at which he was employed. 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 a copy of a 1981 W-2 form from [REDACTED] in New Jersey. This document is some evidence in support of the applicant's residence in the United States for some part of 1981.

The record contains a receipt from [REDACTED]. However, the receipt fails to provide any information that would serve to link it to the applicant, such as his name and address. Therefore, this document will be given no weight.

The applicant has submitted a copy of a pay stub dated in December 1984 from [REDACTED]. This document is some evidence in support of the applicant's residence in the United States for some part of 1984.

The record contains a W-2 form, which the applicant has labeled 1986, from the Continental Restaurant in Long Branch, New Jersey. This document lists the applicant's address as [REDACTED]. However, this is inconsistent with the applicant's testimony in a Form I-687, application for status as a temporary resident, signed by the applicant in 1993, in which the applicant states that he resided at that address beginning in 1988. Due to this inconsistency, this document will be given no weight.

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, signed by the applicant in 1993 and filed to establish the applicant's CSS class membership. As stated previously, 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 the evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). Here, 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 AAO notes that on January 23, 1998, the applicant was charged with a violation of the New Jersey Penal Statutes (NJS), section 2c:34-1.1b(1) *loitering for the purpose of engaging in prostitution*. On January 30, 1998, the applicant was found guilty of the charge, a misdemeanor, and ordered to pay a fine. (Municipal Court Asbury Park, Monmouth County, New Jersey, case number S-1998-225.) An additional issue in this case is whether the applicant's conviction for *loitering for the purpose of engaging in prostitution* would constitute a crime involving moral turpitude (CIMT), which would render the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act, and therefore ineligible for permanent resident status. The statute under which the applicant was convicted states that the applicant's crime is one of disorderly conduct. In general, the crime of disorderly conduct is not a CIMT where evil intent is not necessarily involved. *See Matter of S-*, 5 I.&N. Dec. 576 (BIA 1953), *Matter of P-*, 2 I.&N. Dec. 117 (BIA 1944), and *Matter of Mueller*, 11 I.&N. Dec. 268 (BIA 1965). However, disorderly conduct is a divisible statute, and that portion of the statute relating to the crime of solicitation of prostitution is a CIMT. *Matter of Lambert*, 11 I.&N. Dec. 340 (BIA 1965). The AAO finds that *disorderly conduct, loitering for the purpose of engaging in prostitution* is an

inherently base act and that the applicant's conviction is a conviction for a crime involving mortal turpitude (CIMT). *Matter of Lambert*. Moreover, 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 since, pursuant to section 2C:43-8 (NJS), a disorderly persons conviction in New Jersey carries a maximum possible penalty of six months, and since the applicant was not sentenced to any term of imprisonment, but was ordered to pay a fine, the applicant qualifies for the petty offense exception. Therefore, the applicant's CIMT conviction is not an additional basis on which to find him to be ineligible for adjustment to permanent resident status.

The AAO also notes that on May 29, 2009, removal proceedings were instituted against the applicant based upon the applicant being inadmissible to the United States and excludable as an immigrant without an immigrant visa. See Section 212(a)(7)(A)(i)(I) of the Act. On March 3, 2010, an immigration judge ordered that the removal proceedings be terminated.

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.