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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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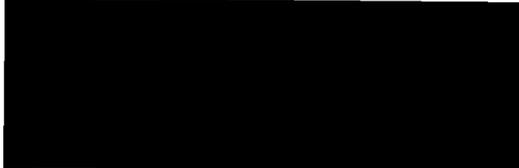


IN RE: Applicant:



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, Seattle, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had failed to establish continuous residence in an unlawful status since prior to January 1, 1982, through May 4, 1988, and continuous physical presence, as required under the regulations at 8 C.F.R. § 245a.15(a) and 8 C.F.R. § 245a.16(b).

On appeal, counsel, on behalf of the applicant, asserts that the director's denial was an error of law and an abuse of discretion. Counsel contends that the applicant has established that he has been in the United States during the required period of time. Counsel did not submit a separate brief or evidence.¹ The AAO will consider the applicant's claim *de novo*, 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

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant 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 section 1104 of the LIFE Act. 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). 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.12(f). 8 C.F.R. § 245a.2(d)(6).

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

¹ The AAO notes that the applicant's Freedom of Information Act request (Number [REDACTED]) was processed on September 11, 1998.

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).

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.* at 80. 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. 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.

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.

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).

The record reflects that the applicant claims to have first entered the United States in November 1981. The relevant documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and resided in an unlawful status through May 4, 1988 consists of three envelopes, several receipts, and declarations from six individuals claiming to know the applicant during the requisite period. The AAO has reviewed each document 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 the requisite period; however, because evidence of such residence is not probative of residence during the requisite time period, it shall not be discussed.

The record contains three postmarked envelopes address to the applicant. The envelopes appear to be postmarked during the requisite period; however, none of the envelopes bear a U.S. postal indication that they were received into the United States. Given this, the envelopes carry little weight as evidence in support of the applicant’s claim.

The record contains photocopies of two receipts dated during the requisite period. The receipts have no identifying information (i.e. the applicant’s name or address) and establish no connection to the applicant. The absence of these elements diminishes the probative value. The record contains a third receipt in the applicant’s name dated during the requisite period; however, the date appears to be altered. Given this, the receipts carry no weight as evidence in support of the applicant’s claim.

The record contains a hand-written jewelry appraisal form, dated in July 13, 1987. While the form bears the applicant's name, it fails to contain any other identifying information about the applicant, such as his address. Given this, the form provides little probative value and will be given minimal weight evidence in support of his claim.

The declarations from [REDACTED] are general in nature and state that the applicant resided in the United States for all, or a portion, of the requisite period. The statements fail to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

The declarations fail to 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 the declarants have a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the statements. The declarations fail to provide concrete details, such as the applicant's place of residence, employment, or the circumstances of the applicant's residence during the requisite period. To be considered probative and credible, witness affidavits must do more than simply state that an affiant 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 the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Given the general nature of the declarations, the declarations carry little probative value and will be given minimal weight as evidence in support of the applicant's claim.

It is also noted that the declaration from [REDACTED] the applicant's brother, contains a discrepancy. The declarant stated that he resided with the applicant from 1981 at [REDACTED], then they moved to Seattle. The record contains two Forms I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, signed by the applicant, under penalty of perjury, in 1991 and 2005. In his 1991 Form I-687, at Question #30, where asked to list all of his residences in the United States since his first entry, the applicant failed to list that he ever resided at the [REDACTED]. The applicant stated that he resided at [REDACTED] November 1981 to April 1991. This discrepancy brings casts doubt on the credibility of the applicant's claim of continuous residence in the United States during the requisite period.

The record also contains an employment letter from [REDACTED], who states that the applicant worked for his gas station doing landscaping and outside work from 1986 to 1988. The employer failed to provide specific details regarding the applicant's period of employment, such as the applicant's address at the time of employment. It is noted that the applicant failed to list that he ever worked for

the above employer in either of his Forms I-687. This inconsistency casts serious doubt on the credibility of the applicant's claim.

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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Based upon the foregoing, the documents submitted in support of the applicant's claim have been found to contain discrepancies and to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. The applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act.³

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.

³ On May 4, 1998, the applicant was arrested and charged with a violation of Section 46.20.342.2 of the Revised Code of Washington (RCW), *driving while license suspended or revoked in the second degree*. On July 13, 1998, the applicant pleaded guilty to the charge, a gross misdemeanor. The Court ordered imprisonment for 365 days and a fine (Kirkland Municipal Court, King County, State of Washington. Case Number 8 [REDACTED] the applicant's one misdemeanor does not represent an additional basis to deny the LIFE application.