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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



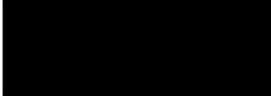
U.S. Citizenship  
and Immigration  
Services



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DATE: **AUG 27 2012**

OFFICE: PHOENIX

FILE: 

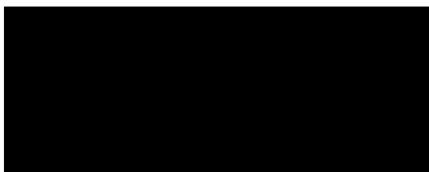
IN RE:

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

On August 3, 2001, the applicant filed a Form I-485 application to adjust to permanent resident status. On May 19, 2011, the director denied the application because the applicant failed to demonstrate that he resided in the United States in a continuous, unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel, on behalf of the applicant, asserts that the documentation provided by the applicant supports by a preponderance of the evidence that he satisfies the statutory and regulatory criteria. Counsel requests a copy of the record of proceedings (ROP) and states that a brief will be submitted within 30 days of receipt of the ROP. The record reflects that the ROP request was completed on May 12, 2012.<sup>1</sup> As of the date of this decision, no additional evidence has been received; therefore, the record will be considered complete. 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).<sup>2</sup>

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).

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<sup>1</sup> Number NRC2011094434.

<sup>2</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.* 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. *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.12(f). 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. 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 established he: (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. 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 during the requisite period consists of attestations from ten individuals claiming to know the applicant during the requisite period and two employment affidavits. 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 AAO has reviewed each document to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The affidavits from [REDACTED] are general in nature and state that the affiants have knowledge of the applicant's residence in the United States for all, or a portion of, the requisite period. These statements fail, however, 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 attestations fail to provide specific details regarding the applicant's place of residence during the requisite period. The attestations 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 they have a sufficient basis for reliable knowledge about the applicant's continuous residence in the United States during the time addressed in the affidavits. For example, [REDACTED] a resident of Holland, states that applicant called him in 1982 and told him that he had been in California since 1981. He fails to have first-hand knowledge of the applicant's residence in the United State during the requisite period. [REDACTED] states that the applicant visited him for a few days in Detroit in July 1985 and the applicant visited him again in 1994. [REDACTED] states that he met the applicant in California in 1981, 1987 and in Michigan in 1985. With such a large time gap between meetings, the affidavits fail to provide sufficient details that would lend credence to the affiants' claim that they have reliable knowledge of the applicant's residence in the United Sates throughout the requisite period. The affidavits provide little probative value and will be given minimal weight as evidence in support of the applicant's claim.

The affidavits from [REDACTED] state the applicant's place of residence during the requisite period, but fail to provide any other probative details. To be considered probative and credible, witness statements must do more than simply state that a declarant 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.

In addition, the record contains a Form I-687, Application for Status as a Temporary Resident, signed by the applicant in September 1990. The affidavit from [REDACTED] is inconsistent with the applicant's Form I-687. In his Form I-687, the applicant stated that he resided at [REDACTED] from July 1985 to the present (1990); whereas, the affiant stated the applicant

resided at [REDACTED] during the time period. This inconsistency detracts from the credibility of the affiant's statement and the affidavit will be given no weight.

The employment affidavits from [REDACTED] state that the applicant was employed in the United States for portions of the requisite period. [REDACTED] states that the applicant worked for her from November 1981 until July 1985 as vegetable picker. [REDACTED] states that he was the owner of a grocery store located at [REDACTED] and the applicant worked for him as a cashier from July 1985 until March 1987, and then after March 1987 as a farm laborer. His statement is inconsistent with the applicant's Form I-687. In his Form I-687, at Question #36, where asked to list his employment in the United States since his first entry, the applicant stated that he worked at [REDACTED] as a housekeeper from June 1985 through 1990. This inconsistency brings into question the veracity of the applicant's claim.

In addition, the employment affidavits do not conform to regulatory standards for letters from employers as stated in the regulations at 8 C.F.R. § 245a.2(d)(3)(i). Both employment affidavits fail to declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. The employment affidavit from [REDACTED] also fails to provide the applicant's address at the time of employment. Given the inconsistency and lack of details, the employment affidavits will be little weight as evidence in support of the applicant's claim.

These noted inconsistencies in the record regarding the applicant's place of residence and employment in the United States during the requisite period are material to the applicant's claim, in that they have a direct bearing on his claim of residence in the United States for the duration of the requisite period. 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 evidence submitted in support of the applicant's claim has been found to have minimal probative value and to be inconsistent as evidence of the applicant's presence in the United States for the requisite period. Thus, 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.

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