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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**

[Redacted]

L2

DATE: **SEP 07 2012**

OFFICE: CHICAGO

FILE: [Redacted]

IN RE: Applicant: [Redacted]

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:

[Redacted]

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, Chicago, and the appeal dismissed by the Administrative Appeals Office (AAO). The AAO withdraws its previous decision and reopens, *sua sponte*, the case. The appeal will be dismissed.

On [REDACTED] 2002, the applicant filed a Form I-485 application to adjust to permanent resident status. On [REDACTED], 2008, the director of the Chicago office denied the Form I-485 application, finding that the applicant failed to establish that he resided in the United States in a continuous unlawful status since before [REDACTED] 1982 through [REDACTED] 1988. See 8 § C.F.R. 245a.15(a). In her decision, the director incorrectly stated that the applicant failed to respond to a notice of intent to deny (NOID) mailed to the applicant on January 23, 2008. The record reflects that the applicant filed a timely response to the NOID, submitting five additional witness statements.<sup>1</sup> On [REDACTED], 2011, the Administrative Appeals Office (AAO) dismissed the applicant's appeal. On [REDACTED] 2011, counsel submitted a request to reopen the case.<sup>2</sup> The AAO finds that the director's error warranted a reopening of the case *sua sponte*.<sup>3</sup> Therefore, the AAO's February 22, 2011 decision is withdrawn.

On [REDACTED] 2011, the AAO issued the applicant a NOID and provided the applicant 21 days to submit additional evidence. In response, counsel requests a copy of the record of proceedings (ROP) and an extension of 30 days after receipt of the ROP. The record reflects that the ROP request was completed on May 8, 2012.<sup>4</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>5</sup>

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<sup>1</sup> The director acknowledged receipt of the applicant's response to the NOID in an amended decision, dated April 22, 2008, regarding the applicant's Form I-687 application for status as a temporary resident.

<sup>2</sup> Regarding the applicant's FOIA request number [REDACTED], in counsel's motion to reopen he states that he did not receive a copy of the record of proceeding (ROP), and that although the applicant received a copy, certain information was redacted. According to U.S. Citizenship and Immigration Services (USCIS) records, the FOIA unit responded to counsel's request for a copy of the ROP, and requested that counsel submit the applicant's verification of identity. When counsel did not respond to the request, the case was closed on [REDACTED], 2010, and a final letter was sent to counsel. On [REDACTED] 2011, the AAO sent a follow-up communication to counsel advising him that it does not have jurisdiction to consider appeals of the decisions of the FOIA unit, and advising him how to file such an appeal. The record reveals that the applicant's FOIA request, number [REDACTED] was processed on [REDACTED] 2009. The record reveals that the applicant's FOIA request, number [REDACTED], was processed on [REDACTED] 2002.

<sup>3</sup> The AAO may *sua sponte* reopen any proceeding conducted by the AAO under 8 C.F.R. § 245a and reconsider any decision rendered in such proceeding. 8 C.F.R. § 103.5(b).

<sup>4</sup> Number [REDACTED]

<sup>5</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).

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).

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).

At the time of completing the Form I-485 application, the applicant listed the date of his last arrival into the United States as [REDACTED] 1981. The applicant has submitted, as proof of his asserted date of entry into the United States and continuous residence in the United States during the requisite period, witness statements from [REDACTED] (the applicant’s cousin), [REDACTED] (the applicant’s relative), [REDACTED] and [REDACTED]. 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. However, the statements of the witnesses lack sufficient detail, because they fail to provide concrete information specific to the applicant which would demonstrate that the witnesses have a sufficient basis for reliable knowledge about the applicant’s residence in the United States during the requisite period. [REDACTED] states that she met the applicant in [REDACTED] 1981 at the [REDACTED] in Chicago and that they spoke to one another on the phone every several months. [REDACTED] states she met the applicant in [REDACTED] 1983 while she and the applicant worked together for [REDACTED].

The great majority of the affiants, [REDACTED] and [REDACTED], were in India during the requisite period and, therefore, did not have first-hand knowledge of the applicant’s continuous residence in the United States during the requisite period. Therefore, these witness statements will be given no weight.

The record contains a witness statement from Rev. Dr. [REDACTED] pastor of the [REDACTED] Illinois, who states that he met the applicant in [REDACTED] 1981, and many other times at his church. However, the testimony of the witness is inconsistent with the applicant’s testimony in two Forms I-687, Application for Status as a Temporary Resident, filed in 2006 and 1989, respectively, in which the applicant states that he was living in Houston, Texas from 1981 to 1983. In addition, although the applicant listed his membership in the [REDACTED] in the Form I-687 filed in 2006, he failed to list his association with this church, or any other religious organization in the Form I-687 application filed in 1989.

At part 34 of the Form I-687 application filed in 1989, where applicants are asked to list their involvement with any religious organizations, he 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 his residence in the United States for the duration of the requisite period. As stated above, doubt cast on any aspect of an 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 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 witness statement does 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. This attestation fails to comply with the cited regulation. Therefore, this attestation is of little probative value.

The remaining evidence in the record is comprised of copies of the applicant's statements, the Form I-485 application, a Form I-687 application for status as a temporary resident, filed in 1989 to establish his CSS class membership, and an additional I-687 application filed in 2006. The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding the date he first entered the United States, and the dates he worked at particular locations in the United States during the requisite period.

The applicant was provided an opportunity to reconcile inconsistencies in the record, and to supplement the record, but failed to do so. Therefore, the AAO finds the applicant's claim to lack credibility and to be probably not true.

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. 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 [REDACTED] 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.