



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE:

OFFICE: SAN ANTONIO

JAN 08 2014

[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:

Enclosed please find the decision of the Administrative Appeals Office in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

DISCUSSION: The San Antonio Field Office Director (director) denied the Form I-485, Application to Adjust to Permanent Resident Status under section 1104 of the Legal Immigration Family Equity (LIFE) Act, and certified its decision to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed. The application will be denied.

On May 30, 2002, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.<sup>1</sup> On April 13, 2004, the Dallas Field Office Director denied the application due to the applicant's failure to satisfy the basic citizenship skills requirement. On appeal, the AAO affirmed the director's decision, and remanded the matter to permit the director to evaluate whether the applicant established eligibility for adjustment to temporary resident status pursuant to the regulation at 8 C.F.R. § 245a.6.

The regulation at 8 C.F.R. § 245a.6 provides, in pertinent part:

If the district director finds that an eligible alien as defined at § 245a.10 has not established eligibility under section 1104 of the LIFE Act (part 245a, Subpart B), the district director *shall* consider whether the eligible alien has established eligibility for adjustment to temporary resident status under section 245A of the Act, as in effect before enactment of section 1104 of the LIFE Act (part 245a, Subpart A).

(Emphasis added).

On June 11, 2013, the San Antonio Field Office Director issued a new decision on the remanded LIFE Act application. Pursuant to the regulation at 8 C.F.R. § 245a.2(r), the applicant and counsel of record were given notice of the certification of the decision to the AAO, and afforded the opportunity to submit a brief within 30 days from the service of the notice. The director did not make a probative determination regarding whether the evidence submitted by the applicant establishes his eligibility for temporary resident status pursuant to the regulation at 8 C.F.R. § 245a.6.

Accordingly, because the director did not make a probative determination regarding whether the evidence submitted by the applicant establishes his eligibility for temporary resident status pursuant to the regulation at 8 C.F.R. § 245a.6, or inform the applicant of any deficiencies within the evidence, on September 9, 2013, the AAO sent the applicant a follow-up communication informing him that additional documentation was required in order to complete the adjudication of his appeal, and requesting that the applicant provide additional evidence.<sup>2</sup> Specifically, the AAO requested that the applicant provide evidence that he entered the United States before January 1, 1982, and that he continuously resided in the

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<sup>1</sup> Previously, on June 11, 1990, the applicant applied for class membership in a legalization class-action lawsuit and submitted a Form I-687, Application for Status as a Temporary Resident.

<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).

United States in an unlawful status since such date and throughout the requisite statutory period. The AAO's letter noted that the submitted witness statements did not provide information sufficient to support the witnesses' claimed knowledge of the applicant's residence in the U.S. during the requisite period. The AAO's letter also informed the applicant of deficiencies within the evidence, and noted that the submitted employment verification letters did not satisfy the regulatory requirements. The AAO also requested a final court disposition regarding the applicant's criminal arrest on June 3, 2012 by the Bexar County Sheriff's Office in San Antonio, Texas on a misdemeanor charge of *driving while under intoxicated*. The AAO further noted that the applicant may be ineligible for temporary and permanent resident status if he is inadmissible on the basis of previous unlawful reentries into the United States. The AAO requested that the applicant provide a completed Form I-690, waiver of inadmissibility.

On October 6, 2013, in response to the AAO's request, counsel submitted a final court disposition for the applicant's arrest for *driving while under the influence*. In addition, counsel requested and was granted an extension until November 7, 2013 for any additional response to the AAO's communication. Counsel submitted an additional response to the AAO's communication which included additional witness statements, a statement from the applicant and a copy of a Form I-797C, Notice of Action, indicating that on October 16, 2013, the applicant filed with the Missouri Service Center a Form I-690, Application for Waiver of Grounds of Inadmissibility, receipt number [REDACTED]

Regarding the applicant's eligibility for adjustment of status to that of a temporary resident, under 8 C.F.R. § 245a.6 an applicant for temporary resident status 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 and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b).

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. 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.2(d)(5).

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, 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).

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 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).

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 first issue to be addressed is whether the applicant has established that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status throughout the requisite period. 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 affidavits. The AAO has reviewed each document in its entirety to determine the applicant's eligibility. 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 affidavits from the following witnesses: [REDACTED]

[REDACTED] The witness affidavits are general in nature and state that the witnesses have knowledge of the applicant's residence in the United States for a portion of the requisite period. [REDACTED] states that the applicant resided at [REDACTED] from April 1987 through the end of the requisite statutory period. In three statements, [REDACTED] states that he was the applicant's landlord when the applicant resided at [REDACTED] from December 1981 to April or December 1987. He states that in December 1981, the applicant "came to my home asking me (sic) rent him a room."

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness affidavits 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. 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, in an affidavit dated June 5, 1990, Guillermo Gualy states that he was the applicant's co-worker from 1981 to 1983. However, the affidavit of the witness is inconsistent with the applicant's Form I-687, Application for Status as a Temporary Resident, signed by the applicant on June 11, 1990 and filed to establish his CSS class membership, in which the applicant indicates that from 1981 to 1983 [REDACTED] was his employer. On certification, counsel submits the applicant's affidavit dated October 12, 2013, addressing this inconsistency. In the affidavit the applicant states that he worked with [REDACTED] at [REDACTED] from 1981 to 1983 and again in 1986. The applicant states that [REDACTED] was the individual at [REDACTED] "who gave me my jobs, I usually dealt with him although in rare occasions I would I would also see the owner." The applicant further states, "[T]he reason I made the error of listing [REDACTED] as my employer is that . . . I thought that he was the manager so I perceived him as my superior . . . I became aware that he was not my employer but my co-worker." However, the affidavit of [REDACTED] does not state that either he or the applicant worked for [REDACTED] in Dallas during the requisite period. In addition, the applicant's affidavit on certification is inconsistent with an employment affidavit from [REDACTED], dated June 5, 1990, which states the applicant was employed by the company from September 26, 1986 to October 24, 1986. Due to these inconsistencies, the witness affidavit of [REDACTED] will be given no weight.

The applicant has submitted employment verification affidavits from [REDACTED]. As previously stated, [REDACTED] states in her affidavit that the applicant was employed by her as a construction laborer for one month, from September 26, 1986 until October 24, 1986. She states that official records of employment were not maintained and are, therefore, unavailable. [REDACTED], states in his

affidavit that the applicant worked for him part-time from 1983 until September 1986 doing odd-jobs in his house and yard.

The employment affidavits of [REDACTED] do 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 affidavits fail to comply with the above cited regulation because they lack considerable detail regarding the applicant's employment. For instance, the witnesses do not state the applicant's daily duties or the number of hours or days he was employed. In addition, [REDACTED] does not state the location at which the applicant was employed. Furthermore, the witnesses do not state how they were able to date the applicant's employment. It is unclear whether they referred to their own recollection or any records they may have maintained. For these reasons, the employment verification letters are of little probative value.

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 the I-485 application and the I-687 application. At the time of completing the I-485 application, the applicant listed his last entry into the United States as being in September 1999. In a Form G-325A, biographic information sheet, filed contemporaneously with the I-485 application and signed by the applicant on May 22, 2002, the applicant stated he lived in [REDACTED] Mexico from the year of his birth to 1981. In a class member worksheet signed by him on June 11, 1990, the applicant stated that he first entered the United States in December 1981. The applicant listed residences in Dallas from December 1981 through the end of requisite statutory period, and employment in Dallas from 1981 to October 1986. The applicant also listed three absences from the U.S. during the requisite statutory period, in November 1982, in August 1986 and from December 1986 to January 1987, respectively. However, 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 sufficient probative and credible evidence of his continuous residence in the United States for the duration of the requisite period. The inconsistencies regarding when the dates of the applicant's employment with [REDACTED] in the United States are material to the applicant's 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). 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.

In sum, upon a *de novo* review of all of the evidence in the record, the AAO finds that the evidence submitted by the applicant has not established that he is eligible for the benefit sought. As previously discussed, the applicant did not provide sufficient probative, contemporaneous evidence of having resided in the United States during the statutory period. In addition, 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 do not overcome materially inconsistent statements from the applicant regarding his employment in the United States during the requisite statutory period. Based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

With regard to the applicant's possible ineligibility on the basis of a criminal conviction, it is noted that an applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to temporary resident status and permanent resident status under the provisions of Section 245A(a)(4)(B) of the Act, 8 U.S.C. § 1255a(a)(4)(B); and the LIFE Act. See 8 C.F.R. § 245a.2(c)(1); section 1104(C)(2)(D)(ii) of the LIFE Act and §§ 8 C.F.R. 245a.11(d)(1) and 18(a)(1).

Here, the record before the AAO reveals that on June 3, 2012, the applicant was arrested by the [REDACTED] County Sheriff's Office in [REDACTED] Texas on a misdemeanor charge of *driving while intoxicated*. On September 9, 2013, the AAO issued a Notice of Intent to Deny/Request for Evidence (NOID/RFE), informing the applicant of deficiencies in the record and asking him to submit documentation to establish the final disposition of this criminal charge. On October 6, 2013, counsel submitted documentation in response to NOID/RFE, including the Assistant District Attorney's motion to dismiss the applicant's criminal case as having been "rejected for further investigation," and an accompanying order of dismissal dated September 26, 2012. ([REDACTED]) Thus, based upon the evidence of record, the applicant does not have a criminal conviction that would render him ineligible for temporary or permanent resident status.

Based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, *supra*. The applicant is, therefore, ineligible for legalization and the AAO will not disturb the director's denial of the application.

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*NON-PRECEDENT DECISION*

Page 8

**ORDER:** The director's April 26, 2013 decision is affirmed. The Form I-485 application is denied. The applicant is ineligible for temporary resident status pursuant to 8 C.F.R. § 245a.6.