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U.S. Department of Homeland Security
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Washington, DC 20536

**U.S. Citizenship
and Immigration
Services**

[REDACTED]

FILE: [REDACTED]

Office: BALTIMORE

Date: FEB 02 2004

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. The file has been returned to the Baltimore office. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Acting District Director, Baltimore, and is now before the Administrative Appeals Office on appeal. The case will be remanded for further action and consideration.

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.

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. *See Matter of E--M--*, 20 I. & N. Dec. 77 (Comm. 1989).

In an effort to establish that he resided in the United States from prior to January 1, 1982 through May 4, 1988, the applicant furnished affidavits from various individuals, as well as additional supporting documents. The director did not specify any actual deficiencies in these affidavits. Nevertheless, he did conclude that in the absence of supporting documentary evidence, affidavits are completely self-serving, and lack credibility and objectivity. However, as stated in *Matter of E--M--*, *supra*, the director cannot refuse to consider affidavits, or any form of evidence relating to the 1981-88 period.

In addition, the director determined that the applicant could not have continuously resided in the United States in the period from January 1, 1982 to May 4, 1988, because he had fathered two children, both of whom were both born in Ghana during this period. While this fact may be considered as a factor in determining the credibility of his claim of residence, these circumstances alone do not preclude the possibility that he continuously resided in this country as claimed. The applicant did provide a declaration from his wife attesting to their claim that the children were conceived in the United States.

The director also determined that the applicant did not continuously reside in this country from prior to January 1, 1982 to May 4, 1988, because he had indicated that he last entered the United States on February 22, 1988 in a separate application that he had submitted in September 1997. However, the applicant's claim of continuous residence in the United States is not necessarily negated because he indicated that he departed and subsequently returned to this country during the requisite period. It must be noted that this departure by the applicant from the United States may very well be the underlying basis of his class membership in one of the legalization class-action lawsuits. Furthermore, in a letter which accompanied the 1997 application, the applicant specified that he first came to the United States in August 1981.

In evaluating evidence of residence, the director may consider the following:

- 1) Quality and extent of evidence;
- 2) Inconsistencies between evidence and claims;
- 3) Lack of explanation as to why the applicant is unable to produce contemporaneous documentation;
- 4) Contradictions in information the applicant has provided on the application and on other forms such as Form I-687 Application for Status as a Temporary Resident, and Form G-325A Biographic Information;

- 5) Lack of proof of entry for aliens from non-contiguous nations whose nationals normally enter the United States at ports-of-entry;
- 6) Any ADP records which may disclose entries to and departures from the United States that aliens made but failed to disclose, that could significantly affect their credibility; and
- 7) Lack of school records, or other evidence of enrollment, for minors.

The burden of proof is upon an applicant to establish he resided in the United States during the claimed period. He must submit some type of documentation which would support his claim. The director must address the evidence furnished initially, and in response to the notice of intent to deny, which includes statements from priests, a physician, a teacher, and a former employee of the United States Immigration and Naturalization Service, and render a determination as to its credibility. If the director has doubts regarding the credibility of the affiants he is not prohibited from attempting to verify the veracity of the statements. Any perceived shortcomings in the evidence must be specified in the director's notice of decision in order that the applicant may have an opportunity to file a meaningful appeal.

Accordingly, the case will be remanded for the purpose of a new decision addressing the above. If the new decision is adverse, it shall be certified to this office.

ORDER: The case is remanded for appropriate action and decision consistent with the foregoing.