

Director of Personal Privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

L2

[Redacted]

FILE: [Redacted] Office: Baltimore

Date: MAR 29 2000

IN RE: Applicant: [Redacted]

PETITION: 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]

PUBLIC COPY

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. 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 District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988.

To be eligible for adjustment to permanent resident status under the LIFE Act the applicant must also establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988. 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.

(ii) Nonimmigrants - In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, such alien must establish that the period of authorized stay as a nonimmigrant expired before such date through the passage of time or that the alien's unlawful status was known to the Government as of such date.

The word "Government" means the United States Government. An alien who claims his unlawful status was known to the Government as of January 1, 1982, must establish that prior to January 1, 1982, documents existed in one or more government agencies so, when such documentation is taken as a whole, it would warrant a finding that the alien's status in the United States was unlawful. *Matter of P-*, 19 I. & N. Dec. 823 (Comm. 1988). An applicant for permanent 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 May 4, 1988. 8 C.F.R. § 245a.11(b).

As cited above, pursuant to section 1104(c)(2)(B)(i) of the LIFE Act, 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 the LIFE Act shall apply to determine whether an alien maintained continuous unlawful residence in the United States. Therefore, eligibility also exists for an alien who would otherwise be eligible for legalization and who was present in the United States in an unlawful status prior to January 1, 1982, and reentered the United States as a nonimmigrant in order to return to an unrelinquished unlawful residence. 8 C.F.R. § 245a.2(b)(9). An alien described in this paragraph must receive a waiver of the inadmissibility charge as an alien who entered the United States by fraud. Section 212(a)(6)(C) [previously numbered Section 212(a)(19)] of the INA, 8 U.S.C. § 1182(a)(6)(c); 8 C.F.R. § 245a.2(b)(10).

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. 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).

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).

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The record shows that that the applicant is a class member in a legalization class-action lawsuit who submitted a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the INA, on December 11, 1990. On the Form I-687 application, the applicant indicated that he first entered the United States without inspection in March 1981. At part #35 of the Form I-687 application where aliens were asked to list all absences from the United States, the applicant listed one absence from the country from March 1985 to May 1985 when he traveled to Cameroon to change his visa status. The applicant further indicated that he subsequently entered the United States as an F-1 student on May 15, 1985 to attend the International Language Institute in Washington D.C. In order to overcome the grounds of inadmissibility arising under section 212 (a)(6)(C) of the INA as a result of his misrepresentation of a material fact in procuring his F-1 student visa, the applicant included a Form I-690, Application for Waiver of Grounds of Inadmissibility. On the Form I-690 waiver application, the applicant declared that his absence from this country in 1985 lasted forty days when he traveled to Cameroon. A review of the record reveals that the applicant subsequently submitted his Form I-485 LIFE Act application on November 13, 2001.

In an attempt to establish continuous unlawful residence since before January 1, 1982, as claimed, the applicant furnished evidence including four affidavits, three employment letters, a Social Security Administration earnings statement reflecting wages earned in 1985, 1986, 1987, and 1988, an original business card, a portion of a page from a Yellow Pages telephone book, a letter attesting to church membership, photocopied pages from the applicant's Cameroonian passport, and an original Form I-94, Record of Arrival/Departure.

In the notice of intent to deny issued on July 22, 2003, the district director questioned the veracity of the applicant's claimed residence in the United States. Specifically, the district director stated the following:

You have submitted photocopies of two affidavits, a letter for the Celestial Church of Christ, and two letters from individuals claiming to be your former employers. The letter from then Celestial Church of Christ does not provide any information your entry or presence in the United States, and therefore holds little probative value in these proceedings. It must be noted that the first affidavit executed on January 22, 1991 by [REDACTED] states that you had been a member of the Celestial Church of Christ since 1981. The record does contain any further evidence supporting [REDACTED]'s assertion. The second affidavit, executed [REDACTED] on October 31, 1990, states that the affiant is your good friend and has been in touch with you since 1981. This affidavit gives your addresses in the United States since June 1981. However, on the date of your interview you were unable to recall your addresses since your claimed entry in March 1981.

The letters which you claim to have been executed by your former employers are photocopies, and are not notarized. The letter purportedly written by an individual, whose signature is not clear, stating that you worked for that individual as a porter from March 1981 to May 1983. The

letter is not on letterhead, and is unsupported by any further evidence. The second letter, also not notarized, purports to have been written on October 5, 1990 by [REDACTED], President of Athey Auto Parts. The letter asserts that you were employed by [REDACTED] from June 1983 to February 1985. This letter is on letterhead but does not establish your entry into the United States before January 1, 1982. You have not submitted any further evidence in support of your conclusion.

The letter from the Celestial Church of Christ referenced above is signed by [REDACTED] Shepard-in-charge USA Parishes, who indicated that the applicant had been a member of the church for many years and identified him as a native of Cameroon in West Africa. Clearly, this letter both supports and corroborates the affidavit of [REDACTED]. The fact that this letter and affidavit do not provide any specific information regarding the applicant's residence since prior to January 1, 1982 does not mean such documents are to be disregarded, rather such documents must be considered in conjunction with the other supporting evidence, as well as the testimony of the applicant himself. While the applicant may not have been able to recall all of his specific addresses in this country at the time of his interview, the Form G-325A, Record of Biographic Information, contained in the record indicates that the interviewing officer asked the applicant to verbally recount his addresses in the United States since his first entry into this country and that he provided some street names as well as the names of towns he resided in the requisite period. It would be unreasonable to expect any individual to be able to recall each and every specific address where he or she resided over a period in excess of twenty or more years.

Although the district director stated that the two employment letters were photocopies, the record contains two original letters with clearly discernible signatures that were included with the Form I-687 application. The fact that neither of the letters is notarized or that one of the letters is not written on letterhead stationery is immaterial in the determination of whether the testimony contained in these letters is credible and probative to the applicant's claim of residence. Again, such letters must be considered in light of the other supporting evidence and the applicant's own testimony with a determination being made based upon the totality of the circumstances. Furthermore, the record contains additional supporting evidence that was not considered in making the determinations cited in the notice. Consequently, the inconsistencies cited by the district director cannot be considered as fatal to the applicant's claim of continuous residence in the United States from prior to January 1, 1982 to May 4, 1988.

In response to the notice of intent to deny, counsel submitted a statement in which he asserted that the applicant had made a good faith effort to obtain the evidence relating to events that had occurred over twenty years ago. Counsel declared that the applicant was attempting to obtain further evidence of residence, but the significant passage of time increased the difficulties in obtaining such evidence. The applicant submitted photocopies of the following new documents in support of his claim of residence in the United States for the requisite period: a Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status, two residential lease, a bank wire receipt, a letter of attendance, federal and state tax returns, and five pages of Maryland Department of Motor Vehicle records.

The district director determined that the applicant had failed to overcome the reasons cited as the basis for the intended denial and, therefore, denied the LIFE Act application on December 23, 2003. In the notice of decision, the district director stated that attempts to contact individuals who provided affidavits or businesses where the applicant had been employed had been unsuccessful. However, it is reasonable to conclude that affiants who had provided documents over twelve years ago are no longer available at the same telephone number or address listed as a point of contact in an affidavit or letter. A variety of circumstances including relocation, business closure, or

death could readily account for a failure to contact affiants. Although the district director determined that the applicant had continuously resided in an unlawful status in the United States since his entry as an F-1 student on May 15, 1986 through May 4, 1988, the district director concluded that the applicant had failed to establish continuous unlawful residence in this country from January 1, 1982 up until this period.

On appeal, counsel submits a brief in which he asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel notes again the difficulties associated with obtaining and producing evidence relating to the applicant's residence in this country for a period beginning over twenty-four years ago.

Counsel's arguments regarding the sufficiency of the applicant's evidence of residence have been considered. Such evidence tends to corroborate the applicant's claim to have entered and continuously resided in the United States since prior to January 1, 1982. The applicant admits an absence of forty days from this country when he traveled to Cameroon in 1985. Consequently, it must be concluded that the applicant was returning to an unrelinquished and unlawful residence when he reentered the United States as an F-1 student status on May 15, 1985. As previously noted, the applicant has submitted a Form I-690 waiver application in an attempt to overcome the ground of inadmissibility arising under section 212 (a)(6)(C) of the INA as a result of misrepresentation in procuring his F-1 student visa.

In this instance, the applicant submitted evidence, including affidavits, letters, contemporaneous documents and government records, which tends to corroborate his claim of residence in the United States during the requisite period. The district director has not established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. As stated on *Matter of E--M--*, supra, when something is to be established by a preponderance of evidence, the applicant only has to establish that the proof is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The documentation provided by the applicant supports by a preponderance of the evidence that the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.