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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: NEW YORK Date:

APR 07 2008

MSC 01 335 61151

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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 inconsistencies found are minor and are expected in every application and they do not lead to questions of credibility. Counsel asserts that the applicant's testimony was consistent, detailed and believable. Counsel asserts that the documentation submitted warrants a favorable exercise of discretion.

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 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 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).

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.

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 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.

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

On his Form I-687 application signed May 29, 1990, the applicant listed his seven children's dates of birth as June 2, 1970, April 12, 1973, June 5, 1979, May 5, 1980 ( ), September 6, 1980, February 6, 1981 ( ), and May 11, 1981 ( ).

At item 35 of the Form I-687 application, the applicant listed his absences from the United States during the requisite period as September 5, 1987, to September 14, 1987, and January 15, 1988, to February 19, 1988.

At item 36 of the Form I-687 application, the applicant listed his employment during the requisite period as self-employed.

At the time of his initial interview on May 30, 1990, the applicant claimed to have departed the United States in January 1988 to Canada then to Holland and entered Nigeria with only his birth certificate. The applicant claimed to have returned to the United States in February 1988 with a fraudulent Canadian passport, but it was taken from him by smugglers when he crossed the Mexico-United States border.

On his Form I-485 application signed July 6, 2001, the applicant listed only four children and amended three of their dates of birth to reflect June 11, 1983 ( ), December 11, 1983 and August 1, 1987 ( ).

At the time of his LIFE interview on October 21, 2002, the applicant, in a signed statement, indicated, "I think went to Nigeria in 1983" and that he returned home to Nigeria in 1985 with a passport belonging to another individual, which was taken from him. The applicant indicated that he obtained another passport in 1986 and arrived in the United States the same year. The applicant indicated that he did not return to Nigeria until 1992.

Along with his Form I-485 application, the applicant submitted:

- A Form G-325A, Biographic Information, signed by the applicant on July 6, 2001. On the form, the applicant indicated that he resided in his native Nigeria from May 1944 until September 1988.
- A copy of his Nigerian passport, which indicates that it was issued in Nigeria on November 13, 1981, and valid through November 12, 1986. The passport was renewed in Nigeria on November 17, 1986, and valid through November 12, 1991. The passport contains: 1) a tourist visa issued by the Spain Consulate in Nigeria on August 29, 1984; 2) an arrival and departure stamp dated September 8, 1984, and September 16, 1984, respectively from Nigeria; 3) an arrival and departure stamp dated September 9, 1984, and September 15, 1984, respectively from Spain; 4) a B-1/B-2 non-immigrant visa issued on February 6, 1985, at the American Consulate in Nigeria valid through May 5, 1985; 5) an entry stamp into the United States dated February

10, 1985; 6) a B-1/B-2 non-immigrant visa issued on June 29, 1985, at the American Consulate in Nigeria valid through September 27, 1985; 7) an arrival and departure stamp dated June 23, 1985, and June 24, 1985, respectively from Nigeria; 8) an entry stamp into the United States dated June 24, 1985; 9) a B-1 non-immigrant visa issued on August 7, 1985, at the American Consulate in Nigeria valid through November 6, 1985; 10) arrival and departure stamps from Nigeria dated January 21, 1986, February 16 and 18, 1986, March 27, 1986, April 25, 1986, and September 18, 1986; 11) a B-1/B-2 multiple entry non-immigrant visa issued on February 12, 1987, at the American Consulate in Nigeria valid through May 11, 1987; 12) a departure stamp dated March 6, 1987, from Nigeria; 13) entry stamps into the United States dated March 7 and 28, 1987; 14) an arrival and departure stamp dated April 5, 1987 and April 25, 1987, from Nigeria; 15) an entry stamp into the United States dated April 25, 1987; 15) a B-1/B-2 multiple entry non-immigrant visa issued on June 4, 1987, at the American Consulate in Nigeria valid through June 3, 1988; 16) entry stamps into the United States dated June 17, 1987, November 7, 1987, January 16, 1988, April 13, 1988, and May 11, 1988; and 17) arrival stamps dated June 28, 1987, and January 24, 1988, and a departure stamp dated April 12, 1988, from Nigeria.

The passport contains additional arrival and departure stamps during the requisite period; however, the dates are indecipherable.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence throughout the application process:

- An undated statement from [REDACTED] president of Rinac Air Systems, Inc. in Long Island City, New York, who indicated that the applicant has been employed since July 1981 as a helper.
- A notarized affidavit from [REDACTED] of Staten Island, New York, who indicated that he has known the applicant since 1984, and provided the applicant "assistance in accommodation from 1984 to 1986."
- A letter dated May 4, 1990, from [REDACTED] of Pentecostal Bibleway Outreach Mission in New York, New York, who indicated the applicant has been a member of the church since November 1981.
- An affidavit from [REDACTED] of St. Catherines, Ontario (Canada), who indicated the applicant visited Toronto, Canada from September 5, 1987 to September 14, 1987.
- A notarized affidavit from [REDACTED] of Bronx, New York, who indicated that he provided the applicant with accommodations and food from September 1981 to February 1984.
- A notarized affidavit from [REDACTED] of Brooklyn, New York, who indicated that he has known the applicant since June 29, 1987. The affiant indicated that he provided the applicant with accommodations and food in exchange for assisting him with the maintenance on his property. The affiant attested to the applicant's character and to his departure to Nigeria from January 15, 1988, to February 19, 1988.
- A notarized affidavit from [REDACTED] of Miami, Florida, who indicated that he has known the applicant since January 23, 1982.
- An additional notarized affidavit from [REDACTED], who attested to the applicant's New York residences in Bronx from September 1981 to February 1984; in Staten Island from February 1984 to December 1986; and in Brooklyn New York from June 1987 to December 1989.
- Several receipts dated during the requisite period and envelopes postmarked during the requisite period.

A notarized affidavit from a personal friend, [REDACTED] of Delray Beach, Florida, who attested to the applicant's New York residences in Bronx from September 1981 to February 1984; in Staten Island from February 1984 to December 1986; and in Brooklyn New York from June 1987 to December 1989.

The director issued a Notice of Intent to Deny on January 12, 2005, which advised the applicant of inconsistencies between his Forms I-687 and I-485 applications, his Form G-325A, his Nigerian passport and the employment documentation submitted.

The director, in issuing her Notice of Intent to Deny, also drew extensively from the questions and answers provided at the time of the applicant's LIFE interview. However, neither the interviewing officer's notes nor a signed statement executed by the applicant corroborating the interviewing officer's questions, which would further impact adversely on the applicant's credibility, were incorporated into the record.

Counsel, in response, asserted that the applicant made several visits to his country, but the aggregate did not exceed 180 days, and that the documents submitted were sufficient to merit a favorable exercise of discretion.

The evidence of record submitted does not establish with reasonable probability that the applicant was already in the United States before January 1, 1982, and that he resided in a continuous unlawful status during the requisite period. Specifically:

1. The applicant claimed only two absences from the United States on his Form I-687 application, and at the time of his LIFE interview indicated 1986 was his last return to Nigeria until 1992. However, his passport reflects numerous absences from the United States during the requisite period, which includes several entries into Nigeria subsequent to 1986 and prior to 1992.
2. The applicant's claim to have entered Nigeria with only his birth certificate in January 1988 is not supported by his passport. As previously noted, the passport reflects an arrival stamp of January 24, 1988.
3. At items 22-30 on the Form I-687 application, the applicant indicated that he was never issued a visa and entered the United States without inspection. However, his passport reflects that he was issued a non-immigrant visa on four separate occasions and entered the United States with the visas on numerous occasions during the requisite period.
4. The fact that the applicant incorrectly listed the dates of birth for some of his children on his Form I-687 application raises significant issue to the legitimacy of the applicant's residence during the period in question.
5. **The employment letter from [REDACTED] has no evidentiary weight or probative value as the applicant indicated on his Form I-687 that he was self-employed during the requisite period. Assuming, arguendo, the letter is genuine, the letter would still lack probative value as the affiant failed to list the applicant's address during the period of this employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiant also failed 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.**

6. The letter from [REDACTED] has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the reverend does not explain the origin of the information to which he attests.
- 7 [REDACTED] attested to the applicant's residences in the United States since 1981, but provided no details regarding the nature or origin of the relationship with the applicant, or the basis for the continuing awareness of the applicant's residence.
8. [REDACTED] cannot attest to the applicant's residence prior to January 1, 1981, as the affiant claimed to have met the applicant on January 23, 1982. In addition, the affiant provided no details regarding the nature or origin of the relationship with the applicant, or the basis for the continuing awareness of the applicant's residence.
9. The applicant indicated on his Form I-687 application to have been residing in the United States since September 1981. However, his passport was issued to him in Nigeria on November 13, 1981. No explanation has been provided as to how the passport was issued with his photo when he was supposed to be residing in the United States.
10. It is significant that, even though the applicant has been made aware of the contradicting information listed on his Form G-325, and Forms I-485 and I-687 applications, counsel has neither addressed this matter in response to the Notice of Intent to Deny nor on appeal.

These factors along with the fact that the applicant indicated on his Form G-325A that he was residing in Nigeria until September 1988 tend to establish that the applicant utilized documents in a fraudulent manner in an attempt to support his claim of residence in the United States during the requisite period. By engaging in such an action, the applicant has irreparably harmed his own credibility as well as the credibility of his claim of continuous residence in the United States for the requisite period.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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 (BIA 1988).

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5<sup>th</sup> ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the credibility issues arising from the documentation, absence of a plausible explanation, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant is 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.