

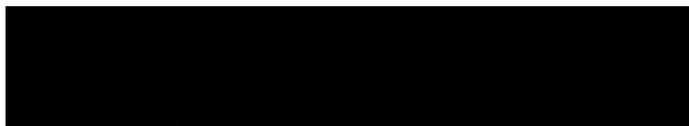
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U.S. Citizenship
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62

FILE: [REDACTED]
MSC 02 281 60897

Office: GARDEN CITY, NEW YORK

Date: **DEC 01 2008**

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: SELF-REPRESENTED

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the director in Garden City, New York. The decision is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that she entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal the applicant submits an explanation for one evidentiary deficiency in the record.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: “An alien shall be regarded as having resided continuously in the United States if *no single absence* from the United States has *exceeded forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(b).

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 its amenability to verification. See 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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; 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.

The applicant, a native of Trinidad and Tobago who claims to have lived in the United States since June 1980, filed her application for legal permanent resident status under the LIFE Act (Form I-485) on July 8, 2002.

In a Notice of Intent to Deny (NOID), dated June 13, 2007, the director indicated that the evidence of record failed to demonstrate that the applicant entered the United States in June 1980, as claimed, and that she resided continuously in the United States in an unlawful status from then through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

In response to the NOID the applicant submitted two new documents as evidence of her residence in the United States during the requisite period for LIFE legalization.

On June 30, 2007, the director issued a Notice of Decision denying the application. The director indicated that the documentation submitted in response to the NOID was insufficient to overcome the grounds for denial.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see*

also, Janka v. U.S. Dept. of Transp., NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. See, e.g. Dor v. INS, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that she has not.

The documentation that the applicant submits in support of her claim that she entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through May 4, 1988, consists of the following:

- A copy of the applicant's passport.
- An affidavit from [REDACTED]
- A copy of a baptismal certificate.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each affidavit in this decision.

On the Form I-687 (application for status as a temporary resident) filed by the applicant in March 1990, the applicant indicated that she was absent from the United States twice in the 1980s. The first absence was from March 1985 to April 1985, and the second was from July 1989 to August 1989. The file contains a copy of the applicant's old passport with an issue date of February 14, 1984, in Trinidad and Tobago. The applicant has not provided any explanation as to how she could have obtained the passport in Trinidad and Tobago at a time she claims to have been physically present in the United States. This conflicting information calls into question the veracity of the applicant's claim that she entered the United States in June 1980 and has resided continuously in the country in an unlawful status through May 4, 1988.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

The applicant has no contemporary documentation from the 1980s demonstrating that she was residing in the United States at any time before August 1989, the date of a stamp in her passport admitting her into the country. For someone claiming to have lived in the United States since 1980, it is noteworthy that the applicant is unable to produce a solitary piece of primary or secondary evidence during the following eight years through May 4, 1988.

The affidavit from [REDACTED] of Holy Ghost Revival Center in Richmond Hill, New York, dated July 5, 2007, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. [REDACTED] vaguely states that the applicant was “qualified to do missionary work according to the teaching of Christ from 1981 to 1985,” had “progressed to the office of assistant Pastor of the Holy Ghost Revival Inc. under the auspice of [REDACTED]” and had done missionary and voluntary work in Florida and Tennessee. [REDACTED] does not state where the applicant lived at any point in time between 1981 and 1988, does not indicate how and when he met the applicant, and does not state whether the information about the applicant’s association and activities at the church was based on his personal knowledge, church records, or hearsay. Furthermore, he is vague about the applicant’s dates of membership. [REDACTED] does not provide information about the applicant’s whereabouts and activities after 1985, simply stating that “since her return in 1991 her status and character in our organization is beyond excellent.” Thus, [REDACTED] does not account for the applicant’s whereabouts from 1985 to 1991. Since the affidavit does not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that the letter has limited probative value. It is not persuasive evidence of the applicant’s continuous residence in the United States from before January 1, 1982 through May 4, 1988.

As for the copy of the baptismal certificate indicating that the applicant received a Christian baptism on April 21, 1981 at the Holy Ghost Revival Center, it has no probative value as evidence of the applicant’s residence in the United States during the period from before January 1, 1982 through May 4, 1988. No address is indicated for the applicant on the certificate, and no address is indicated for the center where the applicant received the baptism. In addition, there is no notarial stamp or other verification of the date on the certificate. Even if the AAO accepted the certificate as evidence that the applicant received baptism at the Holy Ghost Revival Center in the United States on April 21, 1981, the certificate is not persuasive evidence that the applicant resided continuously in the United States from that date through May 4, 1988.

Given the paucity of evidence in the record, the AAO concludes that the applicant has failed to establish that she entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act. Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.