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Office: NEW YORK

Date: **JUL 09 2008**

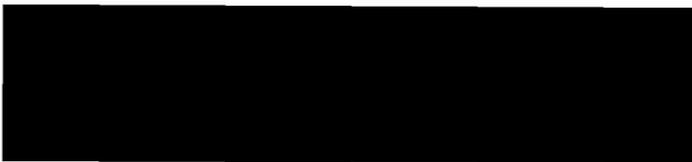
IN RE: Applicant:



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 (director) in New York City. It 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 he 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 counsel asserts that the director did not properly consider the evidence in the record and reiterates the applicant's claim to have resided in the United States continuously in an unlawful status since 1981.

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 Ghana who claims to have lived in the United States since May 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on September 13, 2002. On August 11, 2004 the applicant was interviewed at the New York District Office, at which time he submitted the following documentary evidence of his residence in the United States during the 1980s:

An affidavit by [REDACTED], a resident of Teaneck, New Jersey, dated August 6, 2004, stating that he first came to the United States in 1979 and has known the applicant since 1982.

- An affidavit by [REDACTED], a resident of Corona, New York, dated August 7, 2004, stating that he has been in the United States since August 1980 and has known the applicant since 1981.
- An affidavit by [REDACTED], a resident of Bronx, New York, dated August 9, 2004, stating that he met the applicant at a Ghanaian party in June

- An affidavit by [REDACTED] a resident of Bronx, New York, undated but apparently also from August 2004, stating that he has been in the United States since September 1973 and has known the applicant since 1981.

In June 2006 the applicant submitted three more affidavits, including:

- A second affidavit from [REDACTED], dated February 26, 2006, stating that he knew the applicant in Ghana, met him for the first time in the United States at a funeral home in Harlem around 1981, and communicated occasionally between then and 1988.
- An affidavit by [REDACTED] a resident of Bronx, New York, dated February 6, 2006, stating that he came to the United States in April 1980 and met the applicant at a friend's party in 1982.
- An affidavit by [REDACTED] a resident of Bronx, New York, dated February 15, 2006, stating that he met the applicant at the Ghanaian Annual Picnic in New York City in 1982.

On September 27, 2006, the director issued a Notice of Intent to Deny (NOID), citing some inconsistencies between the applicant's oral testimony at his interview for LIFE legalization and agency records, including information provided by the applicant in a previous application for temporary resident status (Form I-687), dated November 30, 1988. The director pointed out that the only evidence of the applicant's entry into the United States in 1981 and continuous unlawful residence thereafter were the uncorroborated affidavits listed above, which he indicated were insufficient to establish the applicant's eligibility for legalization under the LIFE Act. The applicant was granted 30 days to submit additional evidence.

In response counsel provided explanations for some of the evidentiary inconsistencies cited in the NOID, asserted that the director had failed to consider the affidavits submitted in support of the current application, and resubmitted copies of the newer affidavits from February 2006.

On November 6, 2006, the director issued a Notice of Decision denying the application. The director found that the applicant's rebuttal and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial. The director concluded that the evidence of record failed to establish that the applicant entered the United States before January 1, 1982 and thereafter resided continuously in the United States in an unlawful status through May 4, 1988, as required for legalization under the LIFE Act.

On appeal, counsel asserts that the director improperly focused on illusory conflicts between the applicant's Form I-687, submitted in 1988, and other evidence in the record. Counsel reiterates his contention that the director did not properly consider the applicant's affidavit evidence, and resubmits (again) the three newer affidavits from 2006. No further documentation is submitted.

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 he 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 he has not.

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite time period for LIFE legalization. For someone claiming to have lived and worked in the United States since May 14, 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following seven years through May 4, 1988.

The affidavits in the record have minimalist formats with limited personal input by the affiants. Though each of the affiants claims to have known the applicant since the early 1980s, they provide almost no information about his life in the United States, and their interaction with him over the years. None of the affiants indicates where the applicant was living (much less provides a specific address for him) during the 1980s, and none of them indicates where the applicant worked at that time. Nor are the affidavits accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavits have little evidentiary weight.

Based on the foregoing analysis, the AAO concludes that the applicant has failed to establish that he 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, 8 U.S.C. § 245A(a)(2)(A). 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.