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U.S. Citizenship  
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FILE:

MSC 02 270 60652

Office: NEW YORK

Date: **MAR 28 2008**

IN RE: Applicant:



APPLICATION:

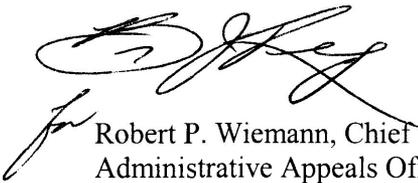
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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 [or Records] 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 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 evidence of record failed to establish that the applicant 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 totality of the supporting evidence, affidavits, and testimony provided by the applicant.

To be eligible for adjustment to permanent resident status under the LIFE Act an applicant must establish his or her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and 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.”

“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.” 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.” 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 Guyana, filed his application for permanent resident status under the LIFE Act (Form I-485) on June 27, 2002. In a Notice of Intent to Deny (NOID), dated April 3, 2006, the director cited discrepancies in the applicant’s testimony at his LIFE legalization interview on April 6, 2004, and the information he provided in the first two Form I-687s (applications for temporary resident status) he filed in October 1990 and January 1991 with regard to his residential addresses in the United States during the 1980s and the number of times he was absent from the country during the years 1982 to 1988. The director indicated that the applicant’s credibility was in question and granted him 30 days to submit additional evidence that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

In response to the NOID, the applicant submitted an affidavit asserting that his first Form I-687 was prepared with the assistance of V.I.P. Immigration Service, which made many mistakes regarding dates and addresses, and then erroneously filed the document in October 1990. According to the applicant, his second Form I-687, filed three months later in January 1991, was prepared with the assistance of an attorney and contained correct information about the applicant’s dates and places of residence during the 1980s, which accorded with the information provided by the applicant at his LIFE interview. The applicant acknowledged that he did not divulge information about a trip to Surinam aboard a freighter in August 1983 at his LIFE

interview (which was also not revealed in his previously filed Form I-687s), but contends that he did not really enter Surinam because he never left the ship on which he was working. Also submitted in response to the NOID were an affidavit from [REDACTED] who claims to have known the applicant in the United States since 1981, and copies of some photographs of the applicant with hand-written notations that they dated from 1981 to 1991.

In the Notice of Decision, dated May 12, 2006, the director denied the application on the ground that the evidence submitted by the applicant had not overcome the grounds of denial as detailed in the NOID. With regard to the voyage to Surinam in 1987, the director indicated that the applicant had not revealed how long he was outside the United States and suggested that this employment on a freighter was inconsistent with his statement that he had been self-employed in the United States from 1981 to 1988. The director cited information provided on the Form I-485 that the applicant had a son born in Surinam on November 16, 1987, as evidence that he had made yet another unacknowledged trip of unknown duration outside the United States. The director concluded that the applicant had not established his eligibility for LIFE legalization.

On appeal, counsel asserts that the totality of the evidence establishes the applicant's continuous unlawful residence in the United States for the time period required for LIFE legalization. A new affidavit is submitted from the applicant which addresses the factual issues discussed in the director's decision. As explained by the applicant, the boat trip to and from Surinam in August 1983 lasted about two weeks, including a day and a half docked at the port during which time the cargo was off-loaded, and the crew members had to be vaccinated in order to leave the ship for this purpose. A vaccination certificate in the record shows that the applicant was vaccinated against yellow fever in Surinam on August 11, 1983. As for the child born in Surinam in November 1987, the applicant asserts that his son was the product of a common law marriage between himself and [REDACTED], a citizen of Guyana, whom he first met in 1982, who visited him in the United States for 17 days in March 1987, and who informed him from Guyana in May 1987 that she was pregnant. The applicant states that he made a short trip to Guyana to visit his four-month old son in March 1988. According to the applicant, the trip to Guyana in March-April 1988 was his only departure from the United States (aside from his two-week voyage to Surinam in August 1983) during the time period from January 1, 1982 through May 4, 1988, and therefore did not interrupt, individually or cumulatively, his continuous residence in the United States since 1981.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish that he 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.

While the applicant has provided in his affidavit(s) some answers to the evidentiary inconsistencies and omissions cited by the director in the NOID and in the Notice of Decision, there are still some conflicts in the record that the applicant has not explained. Thus, in sworn affidavits prepared three days apart before the same notary public in Miami, Florida, the applicant gave completely conflicting information about the dates and circumstances of his initial

entry into the United States and first trip back to Guyana. On October 12 1990, the applicant declared that he first entered the United States in July 1981 without inspection in a truck crossing the border from Mexico into California, that his first trip back to Guyana was in April 1983, and that he returned to the United States on a visitor's visa in May 1983. On October 15, 1990, however, the applicant declared that he first entered the United States through New York on a visitor's visa in January 1981, that his first trip back to Guyana was in January 1982, and that he re-entered the United States on a visitor's visa in February 1982. While the information submitted by the applicant in subsequent affidavits and applications follows the second scenario (with the applicant asserting that his unlawful residence in the United States began when he overstayed his visa in 1981), the applicant has provided no explanation for the contradictory information in his first affidavit.

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

The applicant has submitted no verifiable documentation whatsoever from the 1980s – such as earnings statements, rental receipts, tax returns, or bank statements – demonstrating that the applicant resided in the United States during any of the requisite period for LIFE legalization. According to the applicant, the photographs submitted in response to the NOID show him at various venues in New York, New Orleans, and Florida during each of the years 1981 to 1991. There is no date record on any of the photographs to authenticate those years, however, and few visual markers to corroborate their locations. Even if the photos were taken in the United States, they would not demonstrate that the applicant was also a resident of the country.

The only evidence of the applicant's residence in the United States during the 1980s is a series of affidavits prepared long after the fact – between 2000 and 2006 – by individuals who claim to have known the applicant during the 1980s. The earliest of the affidavits were prepared by [REDACTED], in January 2000, who stated that he had known the applicant “for over fifteen years” and that they were roommates at [REDACTED] in New York City, and by [REDACTED], in February 2000, who stated that he was the superintendent of the building at [REDACTED] in New York City and knew that the applicant lived there during the mid-1980s. Neither of these affiants claims to have known the applicant before January 1, 1982. Mr. [REDACTED], while asserting that he and the applicant were roommates, does not specify exactly when that was the case between 1981 and 1985, the years the applicant states that he resided at [REDACTED]. [REDACTED] does not claim to have known the applicant prior to 1985, the year he states that he began living at [REDACTED]. Neither affiant has identified himself with supporting documentation or offered any proof they were in the United States themselves during the 1980s.

Three other affidavits in the record were prepared by the same individual [REDACTED], on different dates – January 2, 2001, May 2, 2006, and June 5, 2006. Mr. [REDACTED] claims that he met the applicant at a birthday party on March 25, 1981 and recounts several occasions at which they saw each other again during subsequent years. Mr. [REDACTED] describes the applicant as a good friend with whom he stayed in contact, but did not provide any of the applicant's residential addresses during the 1980s and did not claim specific knowledge that the applicant was actually residing in the United States during those years, as opposed to traveling back and forth from his home country.

Based on the foregoing analysis, the AAO determines that the applicant has failed to establish that he entered the United States unlawfully before January 1, 1982, and resided in the United States continuously thereafter in an unlawful status 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 section 1104 of the LIFE Act.

The appeal will be dismissed, and the application denied.

The record includes a certified court record from the State of New York indicating that the applicant was arrested on July 19, 2003 and charged under section 221.10 of the New York Penal Code with criminal possession of marijuana in the 5<sup>th</sup> degree – a class B misdemeanor. The court record, dated March 1, 2004, states that the charge was still pending (“not disposed yet”) at that time. In any future proceedings before U.S. Citizenship and Immigration Services, the applicant must submit the final court disposition of that criminal charge.

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