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Office: NEW YORK

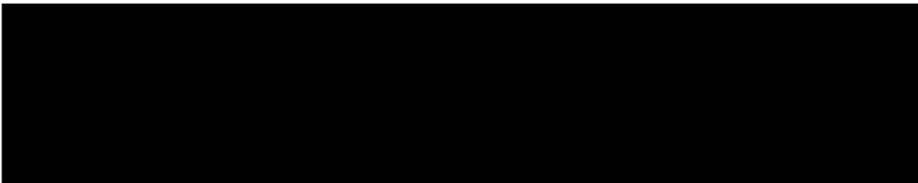
Date: MAY 09 2008

IN RE: Applicant:



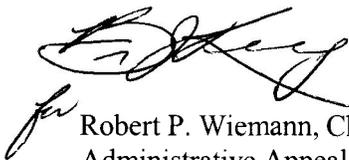
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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.

  
for 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 had not responded to a notice of intent to deny in which the applicant was given the opportunity to submit additional evidence to establish that he had resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and therefore failed to establish his eligibility for legalization under the LIFE Act.

On appeal, counsel asserts that the applicant did respond to the request for evidence and provides copies of the evidence previously submitted.

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, and 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).

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 resided in the United States uninterrupted since November 11, 1981, filed his application for permanent resident status under the LIFE Act (Form I-485) on September 19, 2001. At that time there was no documentary evidence of the applicant's residence or presence in the United States before 1989.

On May 11, 2005, the district office sent the applicant a request for evidence of his residence and presence in the United States during each of the years 1982 to 1988. The applicant responded on June 30, 2005, by submitting three affidavits in identical fill-in-the-blank formats from individuals who attest to the applicant's residence in New York City during the years 1981 to 1989. The affidavits are from (1) [REDACTED], dated June 13, 2005, who stated that the applicant resided at [REDACTED] in Bronx, New York, from 1981 to 1984, (2) [REDACTED], dated June 4, 2005, who stated that the applicant resided at 524 W. 184<sup>th</sup> Street in New York, New York, from 1984 to 1987, and (3) [REDACTED], dated May 6, 2005, who stated that the applicant resided at [REDACTED] in Bronx, New York, from 1987 to 1989.

On July 18, 2005, the director issued a Notice of Intent to Deny (NOID), advising the applicant that the affidavits did not appear either credible or amenable to verification, and did not establish the applicant's continuous residence in the United States from November 11, 1981 through May 4, 1988, as claimed. The applicant was granted 30 days to submit additional evidence.

On March 10, 2006, the director denied the application on the ground that the applicant did not respond to the NOID and the evidence of record failed to establish the applicant's continuous unlawful residence in the United States for the requisite time period of before January 1, 1982 through May 4, 1988.

On April 4, 2006, counsel filed a Form I-290B with the district office, which he called a motion to reopen rather than an appeal, asserting that he had filed a timely response to the NOID with additional documentation the previous summer. As evidence thereof an affidavit was submitted from [REDACTED] dated March 30, 2006, stating that she delivered a letter from counsel addressed to the district director, together with accompanying documentation, to UPS (United

Parcel Service) on August 11, 2005, along with a tracking summary indicating that a package was delivered on August 12, 2005 to an office in New York. The printout of the tracking summary does not identify the contents of the package or the exact office in New York where it was delivered, but the AAO has determined that the subject materials were placed in the record.

The referenced letter from counsel, dated August 11, 2005, was addressed to the director and indicated that new affidavits were being submitted from the same three individuals who had submitted the earlier affidavits in June, accompanied by their naturalization certificates. The letter from counsel also indicated that an affidavit from the applicant was being submitted, as well as a letter from the applicant to Sabena Airlines. All of this documentation was resubmitted in photocopied form with the Form I-290B in April 2006. Though the applicant called his filing a motion to reopen, it was treated as an appeal by the district office and forwarded to the AAO. The materials cited above will now be examined by the AAO.

The applicant's affidavit, dated August 10, 2005, stated that he flew to Canada on Sabena Airlines in 1981 and, before entering the United States shortly thereafter, discarded his Ghanaian passport so that he would not be "summarily returned to Canada if apprehended at the United States border." In his letter to Sabena Airlines dated August 11, 2005 (to which there is no response in the record) the applicant stated that he flew in October 1981 from Brussels, Belgium, to Toronto, Canada, and requested a duplicate of the flight manifest. The new affidavits from the three individuals who previously provided the applicant's addresses in New York during the 1980s contained the following information:

- In his affidavit dated August 9, 2005, [REDACTED] stated that he met the applicant soon after entering the United States on a tourist visa in December 1980, that the applicant's brother lived on the same block as the affiant and his brother, and that he and his brother invited the applicant to live with them at [REDACTED] in Bronx, New York, from 1981 until he moved out in 1984. Since then the affiant states that "we have kept in contact by phone on various occasions." The affiant's Certificate of Naturalization shows that he became a U.S. citizen on October 27, 1995.
- In his affidavit dated August 10, 2005, [REDACTED] stated that he met the applicant through a mutual friend in 1984, that he agreed to let the applicant stay with him, and that the applicant moved out in 1987. Since then the affiant states that "we keep in contact by phone on various occasions." The affiant's Certificate of Naturalization shows that he became a U.S. citizen on June 28, 1996. A couple of photographs were also submitted with the affidavit, which the affiant claims were taken of the applicant and himself during the time they lived together.

In her affidavit dated August 10, 2005, [REDACTED] stated that she and the applicant are half-siblings who lived together during part of their childhood in Ghana, and that she agreed to let him stay with her at [REDACTED] in

Bronx, New York, from 1987 until he found a “decent job” and was able to move out on his own in 1989. The applicant indicated that she had lived in the United States since 1970, and her Certificate of Naturalization shows that she became a U.S. citizen on September 30, 1994.

In response to a letter from the AAO, dated April 10, 2008, requesting any additional documentation the applicant might have, counsel submitted a letter from the applicant stating that he had no further documents, reiterating his claim that he came to the United States in 1981, and adding that he initially worked at gas stations, then went to work for a Days Inn Hotel in Elmsford, Westchester County, with a different Social Security number in 1986, before getting his own Social Security number in 1989 and moving on to the Crown Plaza Hotel in White Plains, New York, where he began working in 1990.

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 from before January 1, 1982 through May 4, 1988. The AAO concludes that he has not.

The applicant has not provided any contemporaneous documentation from the years 1981-1988 that demonstrates his residence in the United States during that time. The only evidence in the record of the applicant’s presence in the United States prior to January 1, 1982, are the affidavits from N [REDACTED] who asserts that the applicant resided with him and his brother on [REDACTED] in Bronx, New York, from 1981 to 1984. The affidavits provide no information about the applicant during the years the affiant claims they lived together, such as where he worked, where he socialized, and the like, and is not supported by any documentation of [REDACTED]’s own presence in the United States in the early 1980s (the affiant’s naturalization in 1995 does not prove that he was in the United States as early as 1981) or his relationship with the applicant – such as photographs, letters, or other documents – from the early 1980s. The other affidavits in the record have similar substantive shortcomings (the photographs submitted by [REDACTED] do not identify either the date they were taken or the exact location of the pictures), and offer no evidence whatsoever that the applicant was in the United States before 1982.

The AAO also notes that the residential addresses identified in the affidavits do not coincide with the information provided earlier by the applicant in a Form I-687, Application for Status as a Temporary Resident, which he prepared in May 1989 in connection with his claim for class membership in the *CSS v. Meese* class action lawsuit. *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993). On the Form I-687 the applicant listed only two residential addresses in the United States during the 1980s – (1) at [REDACTED], in Bronx, New York, from November 1981 to August 1986, and (2) at [REDACTED] in Mount Vernon, New York, from August 4, 1986 to 1989 – as opposed to the three identified by the affiants. According to the applicant’s Form I-687 in 1989, he lived at his initial residence in the Bronx for two years longer than [REDACTED] acknowledged in his affidavits in 2005. Moreover, the Form I-687 identified an address for the

years 1986-89 that bears no resemblance (different street, different town) to the two addresses identified by [REDACTED] and [REDACTED] in their 2005 affidavits as the applicant's residential addresses during the years 1984-87 and 1987-89, respectively.

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). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.*

In addition to the residential inconsistencies discussed above, the AAO notes that the applicant did not list any employment history in the United States on his Form I-687 in 1989. In the current proceeding under the LIFE Act, by contrast, the applicant claims to have worked at a Days Inn from 1986 to 1989, and before that at gas stations.

Based on the foregoing analysis – including the lack of credible evidence and the inconsistencies in the record – the AAO concludes that the applicant has failed to establish that he 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.