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U.S. Citizenship  
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MAY 22 2008

FILE: [REDACTED] Office: BALTIMORE Date:  
MSC 01 305 60008

IN RE: Applicant: [REDACTED]

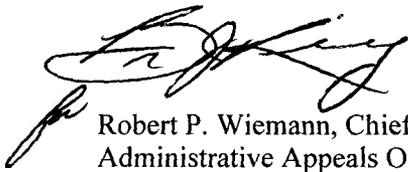
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



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, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) 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 applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel asserts that it is unfortunate that prior counsel submitted false information on the applicant's behalf, and that the applicant was unaware of said information and cooperated with investigators when it came to light. Counsel provides copies of previously submitted documents in support of the appeal.

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. Section 1104(c)(2)(B)(i) of the LIFE Act; 8 C.F.R. § 245a.11(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 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.

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

- A lease agreement entered into on February 1, 1988, between the applicant and Heritage Park Apartments for residence at ██████████ Adelphi, Maryland.
- A 1981 wage and tax statement from Fox Entertainment at 2015 L Street, Washington, D.C.
- His passport issued on November 3, 1986, by the Ministry of Foreign Affairs in Ghana. The passport contains: 1) a departure stamp dated November 14, 1986, from the Ghana immigration; 2) a B-1/B-2 multiple nonimmigrant visa issued on November 4, 1986, at the American Consulate in Accra, Ghana valid through November 4, 1987; and 3) an entry stamp into the United States dated November 16, 1986.
- Bank statements dated May 15, 1987, June 15, 1987, August 15, 1987, and September 15, 1987, from Washington Federal Savings Bank along with several checks dated during May 1987 through December 1987.
- Earnings statements for the periods ending April 18, 1987, May 2 and 30, 1987, and August 8 and 22, 1987, from Sutton Place Gourmet II, Inc. in Bethesda, Maryland.
- Two earnings statements for the periods ending May 31, 1987, and June 30, 1987.
- Several envelopes postmarked during 1987 and addressed to the applicant at addresses in Maryland and Washington, D.C.

The record also contains a Form I-140, Petition for Prospective Immigrant Employee, filed by Sutton Place Gourmet on behalf of the applicant on October 17, 1988.<sup>1</sup> Accompanying the Form I-140, are employment letters dated November 10, 1987, and March 22, 1989, from ██████████, chairman and managing director of Panaf Agro Development Consortium Ltd., in Accra, Ghana, and a Form ETA-750, Application for Alien Employment Certification. Mr. ██████████ in his initial letter attested to the applicant's employment from November 20, 1980, "to the time he left for his trip to United States," and in his second letter, Mr. ██████████ attested to the applicant's employment from November 1980 to July 1986. The Form ETA-750 indicated that the applicant had attended Accra Legon University in Accra, Ghana from October 1980 to July 1984.

The director, in his Notice of Intent to Deny dated April 8, 2005, advised the applicant of his failure to submit evidence of his February 4, 1981, entry into the United States with a B-2 nonimmigrant visa, and of the contents of the employment letter from his former employer, Ekow Essel. The director noted that the record contained a letter from his former employer, Panaf Agro Development Consortium Ltd., in Accra, Ghana, which attested to his employment from November 20, 1980 "to the time you left for the United States on November 16, 1988."<sup>2</sup> The director also noted that the Form I-140 listed the date of birth of the applicant's youngest son as January 17, 1987, and as such, the applicant had to have been physically present in Ghana on or around April 1986.

The applicant was further advised that he had failed to provide any independent documentary evidence establishing his purported employment at Fox Entertainment and an attempt to contact Fox Entertainment was conducted, "but the telephone number provided on the W2 form no longer existed, if ever at all." The applicant was advised that except for the 1981 wage and tax statement, he had provided no documentary evidence to establish continuous residence in the United States until November 16, 1986.

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<sup>1</sup> The Form I-140 application was denied on May 1, 1989.

<sup>2</sup> The date should have read November 16, 1986.

It must be noted that the wage and tax statement does not list a telephone number for Fox Entertainment; however, the record does contain a Form G-166C, Memorandum of Investigation, which reflects that on March 2, 1993, an officer of the legacy Immigration and Naturalization Service contacted the Chesapeake and Potomac Telephone Company in order to obtain the telephone number for Fox Entertainment on L Street in Washington, D.C., and that a telephone number for the entity did not exist.

The applicant was also advised that his former counsel, [REDACTED] had been convicted of immigration fraud including issuing counterfeit documents to temporary residence applications and that his application was identified as a case involving such fraud.

Counsel, in response, provided copies of documents that were previously submitted along with an affidavit from the applicant. The applicant, in his affidavit, indicated that he has been unlawfully present in the United States since February 4, 1981 "except for two short absences of less than 60 days."

Regarding the 1981 wage and tax statement, the applicant indicated that there was no other independent evidence that could verify his employment at Fox Entertainment as he was only employed at the company for one year and did not know the whereabouts of any of the other employees.

Regarding the employment letters from Ekow Essel, the applicant indicated that the information is false as he worked for the company prior to his 1981 entry into the United States and he did not work for the company during the requisite period. The applicant indicated, "I did not tell my former lawyer that I worked for them at that time."

Regarding attending Accra Legon University, the applicant acknowledged that he did attend the university from October 1980 to July 1980, but he "did not attend this university physically in person. My attendance was strictly through correspondence course which I completed from the United States by mail."

Regarding his son's birth date of January 17, 1987, the applicant indicated that the mother of his son was in the United States at the time his child was conceived.

Regarding his former counsel, the applicant indicated that he believed that counsel had submitted false information on his behalf, but "I had not way of knowing the extent of what was false until such time as your office was able to indicate what was contained in the file on my behalf."

The director, in denying the application on November 21, 2005, noted that the documents submitted from Washington Federal Savings and Sutton Place Gourmet only served to establish the applicant's residence in the United States during 1987. The director noted that despite the applicant's statements regarding his attendance at Accra Legon University and the conception of his son, [REDACTED], the fact remains that the applicant had failed to demonstrate that he had entered the United States on February 4, 1981. The director determined that based on the applicant's claim that Mr. [REDACTED] issued false statements and his former counsel, Mr. [REDACTED], submitted false information on his behalf lessened the credibility of the remaining documents.

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 was in a continuous unlawful status since that date through November 15, 1986, as contradicting and inconsistent documents have been presented.

1. In his affidavit, the applicant claimed that he did not work for Panaf Agro Development Consortium Ltd., since his entered the United States in 1981, and that the letter from Mr. [REDACTED] was

false. The applicant, however, indicated on the Part B of the Form ETA 750 that he was employed by this company from November 1980 to July 1986, and that a work experience letter was being submitted as evidence. The applicant, in affixing his signature on item 16 of the Form ETA-750, certified that the information he provided was *true* and *correct*.

It must be noted that former counsel, [REDACTED] was not representing the applicant at this proceeding.

2. Contrary to counsel's assertions, the applicant has not provided sufficient credible evidence of unlawful residence in the United States during the requisite period. The applicant claims to have resided in the United States since June 1981, but submits only a 1981 wage and tax statement that has been discredited. It is unclear why the applicant would keep a 1981 wage and tax statement form, but no documentation for the subsequent years such as lease agreements, utility bills or rent receipts during the period in question.
3. In his affidavit, the applicant claimed that he worked at Fox Entertainment for only one year. However, on his Form I-687 application, he listed employment at this entity through January 1987. The applicant, in affixing his signature on item 46 of his Form I-687 application, certified that the information he provided was *true* and *correct*.
4. On his initial Form I-485 application filed on May 22, 1995, the applicant indicated that he had continuously resided in the United States since November 1986.<sup>3</sup> The applicant made no mention of residing in the United States prior to November 1986.
5. The remaining rebuttal statements of the applicant have been considered. However, the applicant has not provided any credible evidence to support his claim to have taken correspondence courses while residing in the United States, and that he was not employed by Panaf Agro Development Consortium Ltd., through July 1984. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

These factors raise significant issue to the legitimacy of the applicant's residence in the United States from February 4 1981, through November 15, 1986.

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).

Given the credibility issues arising from the documentation provided by the applicant, 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.

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<sup>3</sup> This Form I-485 application was denied on October 12, 1995, as no evidence of an approval notice for an immigrant petition has been provided.

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 record also contains a letter dated August 13, 1996, pertaining to an Order to Show Cause, in which counsel stated that the applicant had "entered the United States on November 16, 1986 from Ghana where he is a citizen. He has resided in the United States on continual basis since this time." Counsel made no mention of the applicant residing in the United States prior to November 16, 1986.

Accompanying his initial Form I-485 application, the applicant submitted a Form G-325A, Biographic Information, signed May 16, 1995. On this form, the applicant indicated that he resided in his native country, Ghana from October 1980 to November 1986. The applicant also indicated that he was married in Kumasi, Ghana on July 20, 1986. The applicant did not disclose this departure on his Form I-687 application signed August 8, 1990.

These documents further undermine the credibility of the applicant's claim to have resided in the United States since before January 1, 1982, through November 15, 1986, and therefore, it is concluded that he has failed to establish continuous residence in an unlawful status from prior to January 1, 1982 through May 4, 1988, as required.

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