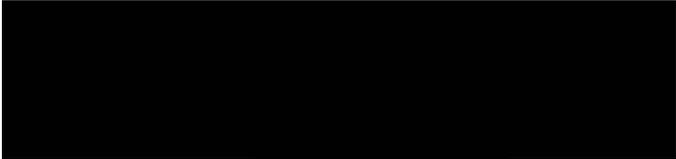


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**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



L2

FILE:



Office: NEW YORK

Date:

MAY 22 2008

MSC 01 300 60275

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

A handwritten signature in black ink, appearing to read "D. G. Wiemann".

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, New York, 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 failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, the applicant asserts that due weight was not afforded to the affidavits he submit in support of his continuous unlawful residence. No additional information or evidence is submitted.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – 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. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 or 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).

On his affidavit for class membership, which he signed under penalty of perjury on January 31, 1991, the applicant claimed that he first entered the United States without inspection, but failed to state the date or year of entry.

In addition, it is noted that the record contains two Forms I-687, Application for Status as a Temporary Resident. On the first Form I-687, signed under penalty of perjury on January 22, 1991, the applicant claims that he resided at [REDACTED] in New York from October 1981 to December 1986, and thereafter he moved to [REDACTED] in New York, and resided there from December 1986 to the present. Regarding his employment history, the applicant claimed to be self-employed as a vendor in section 36 of Form I-687 since October 1981.

On his second Form I-687, which he also signed under penalty of perjury on March 22, 1994, the applicant claimed that he resided at [REDACTED] in New York from 1981 to 1992. Regarding his employment history, the applicant claimed to be self-employed as a peddler in section 36 of Form I-687. It should be noted that there are serious discrepancies in the address history provided by the applicant on these two forms. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In support of his presence in the United States during the requisite period, the applicant submitted the following documents:

1. Affidavit dated January 29, 1991 by [REDACTED] claiming that he knows that the applicant traveled to Senegal on June 3, 1987 and returned on July 14, 1987. (Please be advised that the writing on the affidavit is unclear. The given name of the affiant appears to be [REDACTED], but the AAO is unable to verify this due to illegible handwriting).
2. Affidavit dated January 29, 1991 by [REDACTED], claiming that he has known the applicant for more than five years and that the applicant is self-employed.
3. Affidavit of Circumstances dated January 29, 1991 by the applicant, wherein he states that he first entered the United States through Canada on October 16, 1981.
4. Affidavit dated January 29, 1991 by [REDACTED], claiming that he has known the applicant to reside at [REDACTED] in New York from October 1981 to December 1986, and thereafter at [REDACTED] in New York from December 1986 to the present. He further claims that they sold goods in the streets of New York together since 1987.
5. Affidavit dated January 29, 1991 by [REDACTED]. The affiant claims that he met the applicant in New York six years ago and knows that the applicant lived at 19 [REDACTED] in New York from October 1981 to December 1986, and thereafter at [REDACTED] in New York from December 1986 to the present. (Please be advised that the writing on the affidavit is unclear. The surname

of the affiant appears to be [REDACTED], but the AAO is unable to verify this due to illegible handwriting.

6. Affidavit dated January 6, 1991 by [REDACTED], claiming that the applicant lived with him at [REDACTED] in New York from October 1981 to December 1986.
7. Affidavit dated January 29, 1991 by [REDACTED] claiming that the applicant has lived with him at [REDACTED] in New York since December 1986.

In the Notice of Intent to Deny (NOID), dated June 5, 2006, the director found that the applicant failed to submit evidence demonstrating his continuous unlawful residence in the United States during the requisite period. Specifically, the director noted that the affidavits submitted were insufficient to support a finding that he had entered the country prior to January 1, 1982 and that he had maintained continuous unlawful residence during the requisite period. Furthermore, the director noted that several of the applicant's children were born in the Ivory Coast during the requisite period when he claimed to be residing in the United States, and noted that no claim was made and no evidence submitted to show that his wife visited him in the United States during this time. The director granted the applicant thirty (30) days to submit additional evidence.

The applicant responded on May 26, 2006. In the response, the applicant claims that his wife resided in the United States from November 1982 to April 1983, and that he returned to his native country several times during the requisite period (he claims to have made on two visits on his Forms I-687, in 1983 and 1987). No documentation, such as his wife's passport, was submitted to corroborate these claims. In the Notice of Decision, dated July 3, 2006, the director denied the instant applicant based on the reasons stated in the NOID, and noted that the applicant's response to the NOID appeared to be self-serving and unsupported by fact. On appeal, the applicant simply states that due weight was not given to the affidavits submitted.

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. The applicant submitted seven affidavits, almost all of which are illegible on some level, to support his Form I-485 application. Despite being advised of the deficiencies in these documents and being afforded the opportunity to supplement the record, the applicant failed to provide additional evidence. Here, the applicant has failed to meet this burden.

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which

the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. *See* 8 C.F.R. § 245a.2(d)(3)(v). The affidavits submitted in support of this application, while some in fact do provide details of the applicant's residence and addresses, fall far short of the evidentiary requirements.

While most of these documents identify the applicant by name and state his address history, many of the claims do not make sense. For example, [REDACTED] claims he has known the applicant for six years, yet can personally attest to the address history of the applicant as far back as 1981. Similarly, [REDACTED] claims that he and the applicant have sold goods in the streets of New York together since 1987, but he also attests to the applicant's address as early as 1981. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Furthermore, two of the affiants, [REDACTED] and [REDACTED], claim that the applicant has lived with them at the two addresses listed in most of the affidavits and on one of the applicant's I-687 forms. However, no additional information or documentation is provided, such as lease agreements, rent receipts, utility bills, or an explanation with regard to who pays and/or paid the bills is submitted. Furthermore, the applicant himself provides a different address history on the Form I-687 executed on March 22, 1994, where he claimed that he resided at [REDACTED] in New York from 1981 to 1992, and never mentioned the property at [REDACTED]. Finally, none of the affiants provide sufficient details regarding the basis for their acquaintance with the applicant or the origin of the information being attested to.

It is further noted that no evidence pertaining to the applicant's alleged entry into the United States prior to January 1, 1982 is submitted. Furthermore, there are no documents, such as pay stubs, cancelled checks, bank books or receipts, church attestations, or medical records to corroborate the applicant's claim that he has continually resided in the United States during the requisite period. Finally, the fact that two of his children were born in the Ivory Coast in 1983 and 1987 raise issues regarding the validity of the applicant's claims. Although he provided a statement in response to the NOID in an attempt to explain this issue, no independent evidence was submitted to corroborate his statements. 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)).

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, coupled with the numerous unresolved inconsistencies in the record, seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification.

Given the applicant's reliance upon a document with minimal probative value, and his failure to supplement the record with probative evidence when afforded the opportunity, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

In conclusion, the applicant has failed to establish continuous unlawful residence from before January 1, 1982 through May 4, 1988 as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

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