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U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] MSC 02 176 63010

Office: NEW YORK

Date: OCT 02 2008

IN RE: Applicant: [REDACTED]

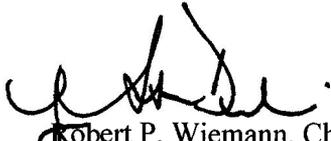
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.


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 Director, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate that he resided in the United States in a continuous, unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel maintains that the applicant first entered the United States in 1980 and the applicant has submitted adequate evidence to demonstrate his burden of proof. No additional evidence was presented.

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.

“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.

Although this term is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means “coming unexpectedly into being.” The applicant has not submitted any evidence to establish that an emergent reason delayed her return to the United States.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date through May 4, 1988. *See* § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant 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 section 1104 of the LIFE Act. 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.* at 80. 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant’s own testimony. 8 C.F.R. § 245a.12(f).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet the burden of establishing, by a preponderance of the evidence, that the applicant’s claim of continuous unlawful residence in the United States during the requisite period is probably true. Upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

On March 25, 2002, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to section 1104 of the Life Act (I-485 LIFE Legalization Application). In support of his application, he provided the following evidence relating to the requisite period:

1. An affidavit, dated February 25, 1992, from [REDACTED] who stated that to his personal knowledge the applicant has resided in the United States from May 1980 to December 1990. He also stated that the applicant was his nephew. The affiant failed to provide details regarding his claimed relationship with the applicant or to provide any information that would indicate personal knowledge of the applicant’s 1981 entry into the United States, his exact place of residence or the circumstances of his residence during the requisite period. Lacking relevant details, this affidavit has minimal probative value.

2. An affidavit, dated April 26, 1990, from [REDACTED] who stated that on September 16, 1987, the applicant visited him in Toronto, Canada. He also stated that on September 29, 1987, he personally drove the applicant across the Canadian border to New York City. The affiant failed to provide details regarding his claimed friendship with the applicant or to provide the applicant's place of residence at the time. The affiant failed to state that the applicant either entered the United States prior to January 1, 1982, or that the applicant continuously resided in the United States throughout the statutory period. This affidavit, while confirming the applicant's absence in 1987, has limited relevance as evidence of his residence in the United States during the requisite period.
3. A declaration, dated March 3, 1989, from [REDACTED] who stated that the applicant visited him and his family in Ghana from February 10, 1988, through February 13, 1988. The affiant failed to provide details regarding his claimed friendship with the applicant or to provide the applicant's place of residence at the time. The affiant failed to state the basis for his knowledge that the applicant resided in the United States prior to the visit or returned to the United States after the visit. This affidavit, while confirming the applicant's absence in 1988, has limited relevance as evidence of his residence in the United States during the requisite period.
4. An undated affidavit from [REDACTED], of Danite Car Service, who stated that the applicant worked with him as a helper from October 1980 to November 1988. By regulation, letters from employers should be on employer letterhead stationery if available and must include the applicant's address at the time of employment, exact period of employment and layoffs, duties with the company; whether the information was taken from official company records; and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit explaining this shall also state the employer's willingness to come forward and give testimony if requested. 8 C.F.R. § 245a.2(d)(3)(i). The affidavit fails to meet these regulatory standards. The affidavit is not on letterhead and does not provide the applicant's address; the affiant did not offer to either produce official company records or to testify regarding unavailable records. There is no official indication that the affiant is connected to the relevant business. This affidavit can be accorded only minimal weight as evidence of residence during the requisite period.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. There are only two affidavits which refer to the applicant's residence and employment in the United States during the relevant years; however, they are bereft of sufficient detail to be found credible or probative. Not one affiant indicates credible personal knowledge of the applicant's entry into the United States in 1980 or credibly attests to his presence in the United States during the requisite period.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have entered the United States on May 25, 1980, through Canada

and to have resided for the duration of the requisite period in New York. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. In this case, his assertions regarding his entry are not supported by any credible evidence in the record.

It is also noted that the record contains a Form I-687, Application for Status as a Temporary Resident, filed by the applicant on March 10, 1992. Based on his own statements, the applicant visited Ghana from February 1988 to April 1988 to attend his uncle's funeral. Although no exact dates were given, based on [REDACTED] affidavit, the applicant was in Ghana on February 10, 1988 to at least April 1, 1988, a period of 51 days. This single absence exceeds the forty-five (45) days permitted under the regulations at 8 C.F.R. § 245a.15(c)(1). The applicant has not submitted any evidence to establish that an emergent reason delayed his return to the United States.

The AAO finds that, upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the applicant has not shown by a preponderance of the evidence that he resided in the United States for the requisite period.

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 lack of credible supporting documentation in the record and his prolonged absence from the United States, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.