

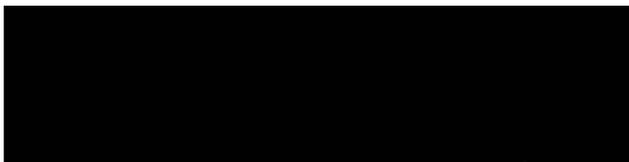
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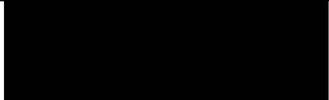
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FILE:



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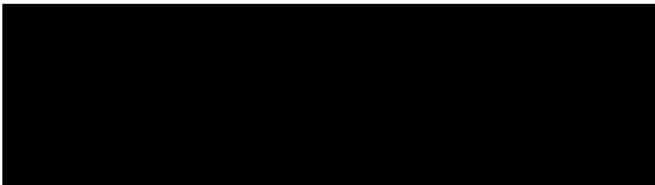
IN RE: Applicant:



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.

*John H. Vaughan*  
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 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 failed to establish that she entered the United States before January 1, 1982 and 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 documentation submitted by the applicant in support of her claim is sufficient to establish that the applicant has continuously resided in the United States from January 1, 1982 through May 4, 1988.

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, as well as 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).

“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.” (Emphases added.)

“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.” (Emphasis added.) 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.” (Emphasis added.) 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 Ghana who claims to have lived in the United States since June 1981, filed her application for legal permanent resident status under the LIFE Act (Form I-485) on June 7, 2002. At that time the record included the following evidence of the applicant’s residence in the United States during the years 1981-1988, all of which had been filed in August 1990 in connection with a Form I-687 (application for status as a temporary resident) and a claim for class membership in the Catholic Social Services (CSS) v. Meese legalization class action lawsuit:

A letter dated June 19, 1990, and a copy of an “employment history on record for [REDACTED]” (undated) from [REDACTED], Fiscal & Admin. Officer at Oceanhill-Brownsville Tenants Association, Inc. in Brooklyn, New York, stating that the applicant was employed as office assistant/recording clerk from January 7, 1982 to June 20, 1985, and was paid a weekly salary of \$185.00.

A letter from [REDACTED] operations manager at Ajoa-Grace Courier in Brooklyn, New York, dated July 11, 1990, stating that the applicant was employed as a dispatch & receiving clerk from July 10, 1985 to the present (July 1990) at a current weekly salary of \$250.00.

- A letter from [REDACTED], M.D. of Stress X-Rays, Inc. in Jamaica, New York, dated July 9, 1990, stating that the applicant had been followed and treated by her and her office for stress in December 1983, January 1984, May 1984, June 1986, July 1988, October 1988, December 1989 and April 1990, and that the applicant continued to be in need of regular follow-ups.
- An affidavit from [REDACTED], a resident of Brooklyn New York, dated December 10, 1989, stating that the applicant lived with him at [REDACTED], Brooklyn, New York, from December 6, 1981 to August 1990.

An affidavit from [REDACTED], a resident of Brooklyn, New York, dated August 6, 1990, stating that the applicant is his friend, that the applicant accompanied him on a trip to Edmonton, Alberta, Canada on July 10, 1987 to visit some friends and her sister, and that they spent three weeks there before returning to New York.

An affidavit from [REDACTED], a resident of Brooklyn, New York, dated July 20, 1990, stating that he had personal knowledge that the applicant resided in the United States from October 1983 to the present (July 1990), and that he met the applicant at society meetings.

An affidavit from [REDACTED], a resident of Brooklyn, New York, dated July 20, 1990, stating that she had personal knowledge that the applicant resided in the United States from January 1982 to the present (July 1990) and that they were co-workers at Oceanhill Brownsville Tenants Association, Inc.

An affidavit from [REDACTED], a resident of Edmonton, Alberta, Canada, dated July 19, 1990, stating that the applicant is her sister, that the applicant arrived in Edmonton on July 10, 1987 from the United States, that she stayed in Edmonton for three weeks until July 30, 1987, and then returned to the United States.

An affidavit from [REDACTED], a resident of Queens, New York, dated July 19, 1990, stating that he had personal knowledge that the applicant resided in the United States from November 1982 to the present (July 1990), and that they are members of the same church.

- An undated letter from [REDACTED], secretary of the Amansie Community Club in Bronx, New York, stating that the applicant joined the club in September 1983 and continued to be a member to date.
- An Air Mail envelope addressed to the applicant at [REDACTED] Brooklyn, New York, from an individual in Accra, Ghana, with a postmark date of December 2, 1981.

At her interview of LIFE legalization on April 12, 2004, the applicant submitted the following additional documentation:

- A letter from [REDACTED], pastor at Ark of Christ Mission Int. Inc. in Brooklyn, New York, dated April 8, 2004, stating that the applicant has been a member of the congregation from May 1985 to the present (April 2004).
- An affidavit from [REDACTED], a resident of Jackson, New Jersey, dated April 8, 2004, stating that he has been acquainted with the applicant since 1981, and that the applicant is the Godmother of his daughter.
- An affidavit from [REDACTED], a resident of Brooklyn New York, dated April 8, 2004, stating that she has known the applicant as a friend from 1987 to the present (April 2004), and that they met as neighbors at a tenants meeting.

In a Notice of Intent to Deny (NOID), dated May 2, 2007, the director indicated that the applicant had not provided sufficient evidence to establish that she resided continuously in the United States from before January 1, 1982, through May 4, 1988. The director noted that the affidavits submitted by the applicant appear neither credible nor amenable to verification, and that the affiants did not submit proof of their direct personal knowledge to the events attested and the circumstances of the applicant's residence. The applicant was given 30 days to submit additional evidence.

In response to the NOID, the applicant submitted the following additional documentation of her residence in the United States during the years 1981-1988:

- An affidavit from [REDACTED], a resident of Brooklyn, New York, dated May 21, 2007, stating that she had known the applicant since 1985, that they are good friends, and that they have socialized together since they met.
- An affidavit from [REDACTED], a resident of Brooklyn, New York, dated May 21, 2007, stating that he has known the applicant since 1981, that they met at church and have been friends ever since.

On July 11, 2007, the director issued a Notice of Decision denying the application. The director indicated that the response and additional documentation were insufficient to overcome the grounds for denial as stated in the NOID.

On appeal the applicant asserts that her oral testimony and documentation in the record are sufficient to establish her claim that she has resided in the United States from before January 1, 1982 through May 4, 1988.

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that she has not.

The file includes an approved Petition for Alien Fiancée (Form I-129F), filed on behalf of the applicant, dated April 1, 2001, a Form G 325A, dated April 1, 2001, accompanying the Form I-129F, and a copy of Optional Form 156, Nonimmigrant Visa Application, dated September 20, 2001. On the Form I-129F, the petitioner - the applicant's fiancée - indicated on question #12, relating to the alien fiancée, that the applicant had never been to the United States. On the Form G-325A, completed and signed by the applicant under penalty of perjury on April 1, 2001, the applicant indicated that she has resided in the city of Kaneshie-Accra, from August 1962 to the present (April 2001). On the optional Form 156-Nonimmigrant Visa Application, completed and signed by the applicant in Ghana on September 20, 2001, the applicant again indicated that she had never been to the United States before. She also listed her intended address in the United States as [REDACTED], Bronx, New York. Citizenship and Immigration Services (CIS) records, show that the applicant arrived in the United States on October 13, 2001, through New York City with a non-immigrant K-1 visa, and indicated her address in the United States as [REDACTED], Bronx, New York.

At her LIFE legalization interview on April 12, 2004, the applicant stated that she first entered the United States in June 1981. On her Form I-687, dated July 12, 1990, for Question #16, where applicants are asked "when did you last come to the U.S." the applicant stated June 4, 1981, and for Question # 35, where applicants are asked to "list absences from the United States since entry" the applicant listed one absence from July 10, 1987 to July 30, 1987, in Canada for a visit. The applicant did not list any other absences from the United States. On her affidavit of circumstances, dated July 12, 1990, and on the Form for Determination of Class membership in *CSS v. Meese* of the same date, the applicant indicated that she first entered the United States on June 4, 1981. On the Form I-485, dated April 10, 2002, the applicant did not indicate her date of last arrival into the United States. And on the Form G-325A, dated April 10, 2002, accompanying the Form I-485, the applicant listed as her residence [REDACTED] Brooklyn, New York, from 1982 to the present (April 2002). The applicant did not list any other residence in the United States.

The conflicting information provided in the foregoing documentation undermines the credibility of the applicant's claim that she entered the United States in 1981 and resided continuously in

the country in an unlawful status through May 4, 1988. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *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 other evidence in the record. *See id.*

The letters and the affidavits in the record – dated in 1990, 2004 and 2007 – from acquaintances who claim to have worked with, resided with, or otherwise known the applicant during the 1980s, all have minimalist or fill-in-the-blank formats with little personal input by the affiants. Considering the length of time they claim to have known the applicant – in most cases since 1981 – the affiants provide remarkably little information about her life in the United States and their interaction with her over the years. Nor are the affidavits accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the letters and affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

The stamps on the airmail envelope from an individual in Accra, Ghana with postmark date of December 2, 1981, addressed to the applicant at [REDACTED], Brooklyn, New York, conforms to a series of stamps issued by the government of Ghana on November 26, 1981. See Scott 2006 Standard Postage Stamp Catalogue, Vol. 3, p. 244. Even if the AAO accepted the envelope as credible evidence of the applicant's residence in the United States in 1981, however, it would not be sufficient in and of itself to establish the applicant's continuous residence in the United States through May 4, 1988, as required for legalization under the LIFE Act.

Based on the foregoing analysis of the evidence, and the unresolved conflicts in the record about the time frame of the applicant's initial entry into the United States and when her continuous residence began, the AAO concludes that the applicant has failed to establish that she 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.