U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

L 2

[redacted]

FILE: [redacted] Office: MIAMI (WEST PALM BEACH) Date: AUG 26 2008

consolidated herein]
MSC 01 364 61481

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: Self-represented

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 Miami, Florida. 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 he maintained continuous residence in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, the applicant asserts that he entered the United States in 1979 and that he never returned to Haiti until 2003 and 2006.

To be eligible for adjustment to permanent resident status under the LIFE Act an applicant must establish his or her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and 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."

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, 431 (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 Haiti who was born on January 15, 1961, filed his application for permanent resident status under the LIFE Act (Form I-485) on September 29, 2001.

In his interview for LIFE legalization at the district office in West Palm Beach, Florida, on June 20, 2005, the applicant stated that he entered the United States by boat in February 1979, without documentation, returned home in January 1981, and came back to the United States, again by boat and without documentation, in December 1982.

In a Notice of Intent to Deny (NOID), issued on June 23, 2005, the director indicated that the evidence of record did not establish that the applicant was continuously resident in the United States in an unlawful status from January 1, 1982 through May 4, 1988, and continuously physically present in the United States from November 6, 1986 through May 4, 1988. The director also noted that applicant had not demonstrated basic citizenship skills, in accordance with the requirements of 8 C.F.R. § 245a.17, since the applicant had failed to pass a test of his knowledge of U.S. history and government administered at his interview on June 20, 2005. The applicant was granted 30 days to respond to the NOID and submit additional evidence. The applicant did not respond to the NOID, however, nor submit any further evidence.

By decision dated November 6, 2006, the director denied the application. The director noted the applicant's statement at his interview on June 20, 2005 that he had entered the United States in 1979, traveled to Haiti in January 1981, and returned to the United States in December 1982. The director concluded that the applicant had not established his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

The applicant filed a timely appeal, reiterating that he first entered the United States in 1979, but asserting that he never returned to Haiti until 2003 and 2006, when he received travel authorization and a stamp in his passport. Photocopied pages of his passport have been

submitted showing that the applicant received parole authorization in May 2005 for one year, which was extended in April 2006 for another year.

The applicant did not explain why, if he did not depart the United States for roughly a quarter century after his initial entry in 1979, he specifically stated at his interview for LIFE legalization on June 20, 2005 that he returned to Haiti in January 1981 and stayed nearly two years before coming back to the United States in December 1982. While the applicant claims that he would not have received parole if he had traveled to Haiti in 1981, the record indicates that parole was granted on May 12, 2005, more than a month before his interview at which he acknowledged, apparently for the first time to U.S. immigration officials, that he spent most of 1981 and 1982 in Haiti.

The AAO notes that the applicant provided contradictory testimony at an earlier interview at the Miami District Office on September 5, 1991, at which he submitted an application for temporary resident status (Form I-687) and an affidavit for determination of class membership in the League of United Latin American Citizens (LULAC) v. Immigration and Naturalization Service (INS) class action lawsuit. At that interview the applicant claimed that he first entered the United States unlawfully in December 1981 and had one absence from the United States during the next ten years – a trip to Haiti in January 1984 from which he returned with a B-2 visitor visa in February 1984.

Further adding to the confusion, the applicant filed a subsequent Form I-687 on March 8, 2006 (MSC 05 160 10876), pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al. v. Ridge, et al.*, CIV NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al. v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), in which he stated that he initially entered the United States on December 15, 1981 and did not depart the country until April 2003 for a family visit to Haiti. When interviewed at the district office in West Palm Beach on November 6, 2006, however, the applicant stated that he first entered the United States sometime in 1982. [1]

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

---

[1] Based on this interview testimony, the Form I-687, application for temporary resident status, was denied by the District Director in Miami on the same day as the Form I-485, application for permanent resident status, and on basically the same ground: failure of the applicant to establish that he was residing in the United States in an unlawful status before January 1, 1982, and maintained continuous unlawful residence for the time period required under section 245A of the Immigration and Nationality Act.

The applicant has provided no explanation for, and has not resolved, his myriad conflicting claims about the time frame of his initial entry into the United States and his subsequent trips to Haiti. In view of his testimony at the interview for LIFE legalization in June 2005, however, at which the applicant stated that he was in Haiti from January 1981 to December 1982, as well as his testimony at the interview in November 2006, in connection with the Form I-687 he filed pursuant to the CSS/Newman Settlement Agreements, that he first entered the United States in 1982, 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. Accordingly, the applicant is ineligible for permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A).

The appeal will be dismissed, and the application denied.

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