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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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FILE:

MSC 02 240 60055

Office: NEW YORK

Date:

MAR 18 2009

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 F. Grissom
Acting 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 he 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 director did not give due weight to the affidavit evidence submitted by the applicant, and contends that it establishes the applicant's continuous residence in the United States since May 1980.

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).

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 applicant, a native of Ghana who claims to have resided in the United States since April 1980, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on May 28, 2002. At that time the only evidence in the record of the applicant's residence in the United States during the requisite period for LIFE legalization was a series of affidavits and letters from friends and relatives – filed in 1991 along with a Form I-687 (application for temporary resident status) – who claim to have employed, lived with, or otherwise known the applicant during the 1980s.

At his interview for LIFE legalization in 2004, and in response to a Request for Evidence (RFE) on December 28, 2007, and a Notice of Intent to Deny (NOID) on February 11, 2008, the applicant submitted some additional letters and affidavits from individuals who claim to know where the applicant lived and worked and went to church during the 1980s.

On March 18, 2008, the director issued a Notice of Decision denying the application. The director indicated that the affidavit submitted by the applicant in response to the NOID and the previously submitted affidavits (and letters) were not sufficiently probative to establish the applicant's continuous unlawful residence in the United States during the requisite period for legalization under the LIFE Act.

On appeal counsel asserts that the director did not give proper weight to the affidavits submitted by the applicant, particularly the affidavit submitted in response to the NOID, and contends that the evidence as a whole establishes the applicant's continuous residence in the United States since May 1980.

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

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite time period for LIFE legalization. For someone claiming to have lived in the United States since April 1980, it is noteworthy that the applicant is unable to produce a solitary piece of primary or secondary evidence during the following eight years through May 4, 1988.

With regard to the affidavits and letters from friends and relatives, dating from 1991 to 2008, most have minimalist or fill-in-the-blank formats that provide few details about the applicant's life in the United States and his interaction with the authors during the years 1980 to 1988. Considering how long they claim to have known the applicant, it is remarkable how little information the authors provide about him. Even the affidavit by [REDACTED] submitted

in response to the NOID, which is cited in particular by counsel in the appeal, offers no information about the 1980s aside from the affiant's claim that the applicant resided briefly with him during the spring of 1980 and that the applicant resided at a certain address in Bronx, New York, from 1980 to 1991. While asserting that the applicant worked as a "private assistant" and as a painter for an unidentified construction company, [REDACTED] did not indicate the years of that employment. Neither the affidavit by [REDACTED], nor any other affidavits and letters in the record, are accompanied by supporting documentation – such as photographs, letters, and the like – that shows the applicant's relationship to the authors during the 1980s. Considering the paucity of information in the affidavits and letters, the AAO concludes that they do not represent persuasive evidence of the applicant's continuous residence in the United States during the requisite period for LIFE legalization.

Given the lack of probative evidence in the record, the AAO determines 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, 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.