U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEW YORK Date: SEP 08 2009

MSC 03 028 61981

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. 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.

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

The district director determined that the applicant had not established 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 for the applicant states that the applicant has submitted sufficient evidence to establish his eligibility. Counsel submits a brief and additional evidence on appeal.

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).

"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.

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.

In the Notice of Intent to Deny (NOID), dated October 18, 2006, the director stated that the applicant failed to submit sufficient evidence demonstrating that he entered the United States before January 1, 1982, and his continuous unlawful residence and his physical presence in the United States, during the requisite period. The director noted that the record reflects that the applicant was admitted into the United States on January 31, 1982, as a B-2 non-immigrant, with authorization to stay until February 8, 1982; that on July 8, 1985, the applicant re-entered the United States with a G-1 visa; and, the applicant's absence from the United States from February 2, 1986 to April 5, 1986 constitutes a break in his continuous residence. The director determined that the applicant had exceeded the forty-five (45) day limit for a single absence from the United States based on the applicant's travel history as evidenced in the applicant's passport. For these reasons, the director concluded that the applicant could not establish his continuous residence during the requisite period. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated December 1, 2006, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant's attorney responded to the NOID but the evidence submitted failed to overcome the reasons for denial.

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 letters, affidavits, and other documents as evidence to support his Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

In his response to the NOID and on appeal, counsel focuses solely on the portion of the director's decision which pertains to the applicant's absence from the United States from February 2, 1986 to

April 5, 1986 which the director determined constituted a break in the applicant's continuous residence. Counsel asserts that the applicant's absence was for emergent reasons.

On appeal, by the applicant's own testimony, he was outside the United States beyond the period of time allowed by regulation. The applicant asserts, however, that his absence was for emergent reasons. 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 attests that his prolonged absence was due to tribal mourning rituals requiring his presence after burial of his mother; that as the youngest in his generation, his presence was required at the ceremonies to mourn his mother's death; that the ceremonies took place over a period of forty (40) days; and, that he spent more time than he had anticipated in Ghana with his family members and immediate relatives. While the applicant's explanation for his prolonged absence is plausible, the application may not be approved because has failed to establish his continuous residence throughout the requisite period.

The applicant has submitted affidavits and other evidence in an attempt to establish his continuous residence. The evidence of record, however, is clear that the applicant cannot establish the requisite continuous residence. The applicant's claim that he has resided continuously in an unlawful status since prior to January 1, 1982, is not credible. Contrary to the applicant's claim, the record reflects that the applicant was issued a visa on January 28, 1982, and he was admitted into the United States on January 31, 1982, as a B-2 non-immigrant, with authorization to stay until February 8, 1982. The record also reveals that the applicant obtained a G-1 non-immigrant visa, issued by the U.S. Embassy in London, England, on July 5, 1985, and he entered the United States on July 8, 1985, and again as a G-1 non-immigrant on April 5, 1986, at which time he was admitted until the duration of his status. The record also reflects that the applicant also provided a letter from the Jordan Mission to the United States confirming that had been an employee the foreign from May 20, 198 to August 18, 1987. Given this evidence, the applicant cannot establish that he has resided continuously in an unlawful status since January 1, 1982.

These discrepancies cast doubt on whether the applicant has been in the United States in unlawful status since prior to January 1, 1982 as he claims. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in his testimony and in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status throughout the requisite period.

It is noted that counsel does not address the issue of the applicant's non-immigrant status in the United States either in his response to the NOID or on appeal. Neither does counsel dispute that the applicant was a G-1 non-immigrant for two years during the requisite period. Even if the applicant's prolonged absence was for emergent reasons, as discussed above, the applicant re-entered the United

States as a G-1 nonimmigrant with authorization to stay for the duration of his status. Also, the record reflects that the applicant was admitted into the United States on January 31, 1982 with authorization to stay until February 8, 1982. For these reasons, the applicant cannot establish that he resided continuously in the United States in an unlawful status throughout the requisite period.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence 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.