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U.S. Citizenship
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Services



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FILE:



Office: Baltimore

Date:

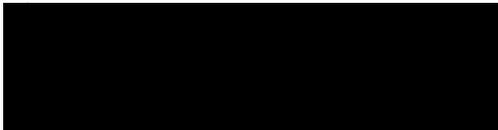
IN RE:

Applicant:



PETITION: 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. All documents have been returned to the office that originally decided your case. 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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, the counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the U.S. from prior to January 1, 1982 through May 4, 1988.

An applicant for permanent resident status 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 and through May 4, 1988. 8 C.F.R. § 245a.11(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 amenability to verification. 8 C.F.R. § 245a.12(e).

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. *See Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989).

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 is a class member in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (INA) on January 9, 1991. At part #33 of the Form I-687 application where applicants were asked to list all residences on the United States from the date of their first entry, the applicant listed the following addresses:

- [REDACTED] from May 1981 to April 1982;
- [REDACTED] from April 1982 to July 1984; and,
- [REDACTED] from July 1984 to January 9, 1991, the date the application was submitted.

In addition, at part #35 of the Form I-687 application where applicants were asked to list all absences from the United States since the date of their first entry, the applicant listed only one absence from this country. Specifically, the applicant indicated that he absence occurred when he traveled to Canada for a visit in May

1987. With the Form I-687 application, the applicant included the following documents in support of his claim of continuous residence in the United States since prior to January 1, 1982:

- An affidavit of residence that is signed by Abban Emmanuel, who indicated that he had known the applicant as a friend since 1981 and listed his residences as [REDACTED] from May 1981 to April 1982, [REDACTED] from April 1982 to July 1984, and [REDACTED] from July 1984 to September 19, 1990, the date the affidavit was executed;
- An affidavit of residence that is signed by [REDACTED] who declared that he had known the applicant as a friend since 1981 and listed his residences as [REDACTED] from May 1981 to April 1982, [REDACTED] from April 1982 to July 1984, and [REDACTED] from July 1984 to September 19, 1990, the date the affidavit was executed;
- A undated receipt from a retail store in Brooklyn, New York;
- A photocopy of a residential lease that reflects that apartment [REDACTED] [REDACTED] was rented to the applicant and another individual for the twelve-month period from July 15, 1981 to July 15, 1982; and,
- An letter of employment that is signed by [REDACTED] Production Manager for Kitty Knitwear Factory, who indicated that the applicant worked for this enterprise from February 14, 1986 to September 10, 1990, the date the letter was executed.

As noted above, the applicant listed [REDACTED] as his address from May 1981 to April 1982 and [REDACTED] from April 1982 to July 1984, at part #33 of the Form I-687 application. However, the residential lease provided by the applicant reflects that he resided at [REDACTED] from July 1981 to July 1982. The applicant's address as listed in this lease directly contradicts his listing of residences on the Form I-687 application. The applicant failed to provide any explanation for this contradiction.

Subsequently, on May 21, 2002, the applicant filed his LIFE Act application. With his LIFE Act application, the applicant provided photocopies of the previously provided documentation, as well as the following affidavits:

- An affidavit of residence that is signed by [REDACTED] who indicated that he had known the applicant as a friend since 1982 and listed his residences as [REDACTED] from April 1982 to July 1984 and [REDACTED] from July 1984 to September 19, 1990, the date the affidavit was executed;
- An affidavit of residence that is signed by [REDACTED] who declared that he had known the applicant as a friend since 1982 and listed his residences as [REDACTED] from April 1982 to July 1984 and [REDACTED] from July 1984 to September 19, 1990, the date the affidavit was executed; and,

- An affidavit of residence with an attached statement that is signed by [REDACTED] who indicated that he had known the applicant since December 24, 1981, that the applicant resided in the Washington D.C. area since this date, and that he and the applicant played together on a local soccer team and worked together at a construction site in Virginia in 1984.

The affidavits of residence signed by [REDACTED] and [REDACTED] which the applicant included with his LIFE Act application contain addresses and periods of residence for the applicant that directly conflict with the listing of his addresses and periods of residence that both Mr. [REDACTED] and Mr. [REDACTED] provided in their prior affidavits that were included with the Form I-687 application. The applicant failed to provide any explanation for the conflicting testimony provided by Mr. [REDACTED] and Mr. [REDACTED] regarding his addresses and corresponding period of residence. Furthermore, the fact that affidavits containing such contradictory information from the same two parties were executed and are now contained in the record calls into question the credibility of these supporting documents as well as the applicant's underlying claim of residence in the United States from prior to January 1, 1982 to May 4, 1988.

As noted previously, the applicant listed only one absence from this country at part #35 of the Form I-687 application, where he indicated that he traveled to Canada for a visit in May 1987. On the Form G-325A, Record of Biographic Information, which accompanied his LIFE Act application, the applicant indicated that he had been married to his wife in Accra, Ghana on March 23, 1988. The applicant also included a corresponding "Form of Register of Customary Marriages" to reflect that he had been married in Accra, Ghana on this date. The fact that the applicant acknowledged that he was absent from the country when he was married in Ghana on March 23, 1988, directly contradicted his prior claim that his single absence from this country occurred when he visited Canada in May 1987. The applicant failed to advance any explanation as to how he was married in Ghana in 1988, while claiming that his sole absence from the United States occurred in May of 1987. The applicant has not provided any explanation as to why this additional absence from the United States was omitted from the listing of absences at part #35 of the Form I-687 application.

In response to the subsequent notice of intent to deny issued on November 14, 2003, counsel submitted a statement in which he declared that the applicant had resided at [REDACTED] from July 1984 to September 1988, [REDACTED] from September 1988 to April 1989 and again at [REDACTED] from April 1989 to September 30, 1990, the date the Form I-687 application was executed. However, the addresses and periods of residence that counsel attributed to the applicant directly contradict the fact that he listed [REDACTED] Maryland as his address from May 1981 to April 1982, [REDACTED] from April 1982 to July 1984, and [REDACTED] in Alexandria, Virginia from July 1984 to September 1990 at part #33 of the Form I-687 application.

Counsel contends that the applicant was in the United States when he married through proxy in a customary Marriage in Accra, Ghana on March 23, 1988. However, counsel has failed to provide any independent evidence to corroborate his claim. In fact, the "Form of Register of Customary Marriages" contained in the record does not contain any indication that the applicant's marriage was performed through proxy. Instead the document contains a section asking for the signature or thumbprint of the husband and what appears to be his signature.

The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I. & N. Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I. & N. Dec. 503, 506 (BIA 1980). In addition, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm. 1972).

The statements on appeal by counsel regarding the sufficiency of the evidence submitted in support of the applicant's claim of residence have been considered. However, pursuant to 8 C.F.R. § 245a.12(e), the burden remains with the applicant 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. In this current matter, the applicant has submitted documents in support of his claim of residence that contain testimony that directly contradicts and conflicts with information contained in other supporting documents, as well as information the applicant provided on the Form I-687 application relating to his addresses and periods of residence in the United States. Furthermore, the applicant failed to include a separate and additional absence from this country when he provided a listing of his absences at part #35 of the Form I-687. No information has been provided by the applicant regarding the duration and purpose of this unreported absence. No explanation has been provided as to why this absence was omitted from the Form I-687 application. These factors raise serious questions regarding the authenticity and credibility of the applicant's claim of residence in this country, as well as any documents submitted to support this claim. Given these circumstances, it is concluded that documents provided by the applicant are of questionable probative value.

The applicant has submitted minimal contemporaneous documentation to establish presence in the U.S. from the time he claimed to have commenced residing in the United States. In light of the fact that the applicant claims to have continuously resided in the United States since at least 1981, this inability to produce more than an absolute minimum of contemporaneous documentation to support his claim of residence raises serious questions regarding the credibility of the claim. The credibility of the applicant's claim of residence is further diminished by the discrepancies, contradictions, and omissions cited above.

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, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

Given the minimal amount of contemporaneous documentation pertaining to this applicant, the failure of the applicant to provide required information relating to his absences from this country, direct contradictions and conflicts in testimony, and reliance upon supporting documentation with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988, as required.

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