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Washington, DC 20529

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U.S. Citizenship  
and Immigration  
Services



*[Handwritten Signature]* JAN 27 2005

FILE:



Office: Baltimore

Date:

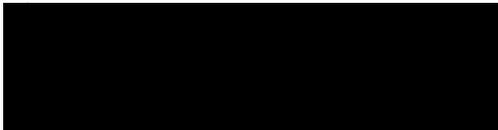
IN RE:

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.

*[Handwritten Signature]*

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.

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**U.S. Citizenship  
and Immigration  
Services**

[Redacted]

*LA*

**JAN 2 2005**

FILE:

[Redacted]

Office: Los Angeles

Date:

IN RE:

Applicant:

[Redacted]

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:

[Redacted]

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*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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The district director determined that 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. The district director further determined that the applicant was inadmissible under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (INA), because he had been convicted of a crime involving moral turpitude in the United States. Therefore, the district director concluded the applicant was ineligible for permanent resident status under the LIFE Act and denied the application.

On appeal, counsel asserts that the district director's lacks specificity and failed to address the evidence provided by the applicant in support of his application and in response to the notice of intent to deny.

An alien must establish that he is admissible to the United States as an immigrant, except as otherwise provided under section 245A(d)(2) of the INA. Section 1140(c)(2)(D)(i) of the LIFE ACT.

An alien is inadmissible if he or she has been convicted of a crime involving moral turpitude (other than a purely political offense), or an attempt or a conspiracy to commit such crime. Section 212(a)(2)(A)(i)(I) of the INA. Pursuant to 8 C.F.R. § 245a.18(c)(2), grounds of inadmissibility under this section of the INA, (crimes involving moral turpitude) may *not* be waived.

The most commonly accepted definition of a crime involving moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. *Jordan v. DeGeorge*, 341 U.S. 223, reh'g denied, 341 U.S. 956 (1951).

A review of the record reveals that the applicant was convicted of assault with a deadly weapon, a misdemeanor violation of section 245(A)(1) of the California Penal Code on April 23, 1989. The applicant was placed on summary probation for a period of 24 months on the condition that he serve 60 days in the Los Angeles County Jail. A conviction for assault with a deadly weapon, or an attempt thereof, under this section of the California Penal Code is considered to be a conviction of a crime involving moral turpitude. *See Jordan v. De George, supra; Matter of Squires*, 17 I. & N. Dec. 561 (BIA 1980); *Matter of Flores*, 17 I. & N. Dec. 225 (BIA 1980); *Matter of Acosta*, 14 I. & N. Dec. 338 (BIA 1973); *Matter of Garcia*, 11 I. & N. Dec. 521 (BIA 1966); *Matter of L-*, 5 I. & N. Dec. 705 (BIA 1954).

While the district director was correct in concluding that the applicant had been convicted of a crime involving moral turpitude and, therefore, inadmissible, she did not consider whether the following exceptions contained at section 212(a)(2)(A)(ii) of the INA might have applicability to the applicant:

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other

documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

In this case, the applicant was born on August 2, 1967 and convicted of a crime involving moral turpitude at the age of 21 on April 23, 1989. Therefore, the exception contained at section 212(a)(2)(A)(ii)(I) of the INA does not apply to the applicant as he was over 18 years of age at the time of his conviction. Nevertheless, the 60-day term of imprisonment to which the applicant was sentenced did not exceed six months. Moreover, the *maximum* possible term of imprisonment that could have been imposed on the applicant for the crime for which he was convicted, assault with a deadly weapon, was a year or less. Clearly, the exception contained at section 212(a)(2)(A)(ii)(II) of the INA does apply to the applicant. As such, he cannot be considered inadmissible, despite his having previously been convicted of a crime involving moral turpitude. Therefore, the applicant has overcome this particular basis of the denial.

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).

In an attempt to establish continuous unlawful residence since before January 1, 1982, as claimed, the applicant has furnished two affidavits of residence, two employment letters, a letter from the pastor of his church attesting to his attendance, and extensive rent receipts covering the period in question. It is noted that, in compliance with the district director's request in the notice of intent to deny, the applicant duly provided originals of these rental receipts. The information provided in the affidavits of residence and employment letters appears to be consistent with that included in the applicant's Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act, which he completed and signed on April 16, 1991.

The district director has not established that the information contained in the applicant's supporting evidence was inconsistent with the claims made on the application, or that it was false information. As stated on *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the proof is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The documentation provided by the applicant supports by a preponderance of the evidence that the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

**ORDER:** The appeal is sustained.