

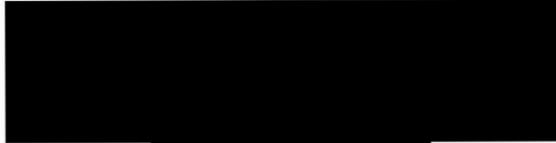
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 01 296 60059

Office: BALTIMORE Date: DEC 22 2006

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: Self-represented

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. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director concluded that the applicant's testimony was at variance with the information initially provided on his Form I-687 application, thereby casting credibility issues on his claim to have continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The director also concluded that the applicant was inadmissible under section 212(a)(1)(A)(i) of the Immigration and Nationality Act (the Act) due his positive test for the HIV Antibody. As such, the director denied the application.

On appeal, the applicant asserts that the discrepancies mentioned in the director's decision "are nothing but a typing mistake/oversight on my part. I do not in anyway, shape or form intend to lie to or deceive anybody...."

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).

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).

Here, the submitted evidence is not relevant, probative, and credible. In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence:

- Two envelopes postmarked September 13, 1981 and July 20, 1983 from Ghana and addressed to applicant at [REDACTED] Alexandria, Virginia.
- An affidavit notarized December 1, 1990 from an acquaintance, [REDACTED] of Alexandria, Virginia, who attested to the applicant's residences in Alexandria, Virginia from October 11, 1980.
- An affidavit notarized December 1, 1990 from [REDACTED] of Gaithersburg, Maryland, who attested to the applicant's residences in Alexandria, Virginia from October 1980. [REDACTED] indicated that he met the applicant at a dance in the Washington metropolitan area.
- A letter dated August 17, 1987 from [REDACTED] supervisor of Cover All in Capital Heights, Maryland, who indicated that the applicant was employed from January 15, 1984 to July 20, 1987.
- A letter dated January 11, 1984 from [REDACTED] of [REDACTED] in Alexandria, Virginia, who indicated that the applicant was in her employ from December 5, 1980 through November 10, 1983.
- An affidavit notarized December 1, 1990 from [REDACTED] of Alexandria, Virginia, who indicated that on May 19, 1987, he traveled with the applicant to visits some friends in Mexico.

The director, in denying the application, noted that there were inconsistencies between the applicant's employment documents and his Form I-687 application. Specifically, the applicant claimed on his Form I-687 application to have worked at Cover All from December 1980 to November 1983 and at [REDACTED] from January 1984 to July 1987; however, both affiants listed different employment dates on their respective letters. In addition, in an attempt to verify the applicant's employment at [REDACTED] and Cover All, Citizenship and Immigration Services (CIS) telephoned the phone number listed on each document. Both numbers, however, corresponded to a private residence and not a business. The director noted that [REDACTED] and [REDACTED] failed to provide a telephone numbers and, therefore, CIS was unable to verify the affiants' claims, and that [REDACTED] failed to submit supporting documentation to support his affidavit.

The applicant, in affixing his signature on item 46 of his Form I-687 application, certified that the information he provided was *true* and *correct*. As conflicting statements have been provided, it is reasonable to expect an explanation from the affiants in order to resolve the contradictions. However, no statement from either [REDACTED] or [REDACTED] has been submitted to corroborate the applicant's statement on appeal. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Consequently, the applicant's statement on appeal cannot be considered as persuasive and, therefore, the employment letters have little probative value or evidentiary weight.

The AAO does not view the three affidavits discussed above as substantive enough to support a finding that the applicant entered and began residing in the United States before January 1, 1982. The affiants provide no detail regarding the nature or origin of their relationships with the applicant or the basis for their continuing awareness of the applicant's residence. In addition, the applicant claims to have residing in the United States since 1980, but provides no credible documentation to support his claim. It is unclear why the applicant would keep an employment letter dated in 1984, but not documentation such as lease agreements, utility bills or rent receipts during this period and subsequent years.

A review of the postal stamps on the envelopes postmarked September 13, 1981 and July 20, 1983 reveals they were not issued by the government of Ghana until at a later date.¹ This further undermines the applicant's credibility.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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 credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

Finally, in the director, in denying the application, noted that the applicant's Form I-693, Medical Examination of Aliens Seeking Adjustment of Status indicated that he had tested positive for the HIV antibody, which was confirmed by Western blot. The director indicated that the applicant was inadmissible under section 212(a)(1)(A)(i) of the Act and that such inadmissibility *may be* waived; however, no Form I-690, Application for Waiver of Grounds of Excludability had been filed. The director concluded that even if said form had been filed, the applicant would still be ineligible for the benefit being sought as he had failed to submit credible evidence establishing his residence in the United States during the requisite period.

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

¹ Scott 2006 Standard Postage Stamp Catalogue vol.3, page 207 (Scott 2005).