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U.S. Citizenship  
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FILE: [REDACTED] Office: LOS ANGELES  
MSC 01 296 60649

Date: FEB 22 2007

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:



**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, 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, Los Angeles, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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

On appeal, the applicant asserts that his case was improperly decided. He contends that he has met all the required conditions to be granted adjustment under the LIFE Act.

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 petitioner 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 or petitioner 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 or petition.

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).

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. See 8 C.F.R. § 245a.2(d)(3)(v).

Here, the submitted evidence is not sufficiently relevant, probative, or credible to meet the applicant's burden of proof.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence throughout the application process:

- Academic transcripts indicating that the applicant attended Santa Ana College in Santa Ana, California from the Spring 1984 semester to the Fall 1985 semester and National University in from 1986 to 1988. The transcripts show that the applicant was awarded a bachelor's degree in manufacturing engineering from National University in January 1989. The transcripts also indicate that the applicant had academic credits from Rancho Santiago Community College, University of California-Irvine, Orange Coast College and San Francisco University.
- An affidavit dated December 11, 2004 from [REDACTED] attesting that she has known the applicant since they met at Thanksgiving Mass in 1980.
- An affidavit dated December 10, 2004 from [REDACTED] attesting that he has known the applicant since they met at a Christmas party at Mr. [REDACTED] residence in 1981.
- A statement dated February 11, 1998 from the Social Security Administration indicating that the applicant had reported earnings from 1985 to 1996.
- A letter dated June 5, 1990 from [REDACTED] Personnel Manager at Coca-Cola Foods in Anaheim, California attesting that the applicant had been continuously employed by the company from March 10, 1986 through that date.
- An affidavit dated May 15, 1990 from [REDACTED] owner of [REDACTED], attesting that the applicant worked for the company "receiving goods in the stores, and cleaning the offices" from January 1984 to October 1986, and from 1987 to that date, and resided at [REDACTED] in Santa Ana, California.
- An affidavit dated May 15, 1990 from [REDACTED] attesting that she has personal knowledge that the applicant resided in Santa Ana, California from November 1980 to April 1988 and Anaheim, California from April 1988 to that date because the applicant was a close friend of her fiancé and they often spent time together.

- A letter dated April 10, 1988 from Dr. [REDACTED] stating that the applicant has been under his care since 1985.
- A receipt from Sears bearing the applicant's name and showing that the applicant, then residing at [REDACTED] in Santa Ana, California, purchased a table on April 1, 1988.
- A certificate showing that the applicant was appointed Board Chairman for Empedocles Chapter of the Grand Lodge of The Ancient and Mystical Order Rosae Crucis (AMORC) on March 20, 1988.
- Receipts from AMORC showing that the applicant paid dues to the organization from 1984 through 1986.
- A Form 1099 interest statement for 1987 from Bank of America bearing the applicant's name and address of [REDACTED] St. in Santa Ana, California.
- A W-2 wage statement for 1986 from Coca-Cola Foods bearing the applicant's name.
- A handwritten receipt from [REDACTED] z indicating that [REDACTED] purchased a gold chain on November 22, 1986.
- A copy of a page from the applicant's passport containing an F-1 visa issued to the applicant on January 11, 1984 to study at Santa Ana College accompanied by an I-94 card indicating that the applicant was admitted to the United States in that status on January 14, 1984.
- A notice dated June 10, 1982 from [REDACTED] in Anaheim, California addressed merely to [REDACTED] and indicating that the addressee had been offered employment as a warehouse worker/cleaner beginning on June 15, 1982.
- An envelope postmarked July 28, 1982 in Nigeria addressed to the applicant at [REDACTED] [REDACTED] in Santa Ana, California
- An envelope postmarked July 28, 1982 in Nigeria addressed to the applicant at [REDACTED] Street in Santa Ana, California
- A handwritten receipt bearing an unrecognizable signature indicating that \$67.40 was received from the applicant residing at [REDACTED] in Santa Ana, California for "NSF check for employee sales" on February 16, 1982.
- A receipt from "[REDACTED]" bearing the applicant's name and listing items and services purchased on January 26, 1981.

- A letter from the applicant's mother in Nigeria with envelope postmarked December 27, 1981 and addressed to the applicant at [REDACTED] in Santa Ana, California.
- A receipt dated November 2, 1981 from Newport Custom Tailors in Santa Ana, California bearing the applicant's name and an apparent residence of [REDACTED]
- A handwritten receipt from [REDACTED] indicating that \$189 was received from the applicant residing at [REDACTED] in Santa Ana for "6 HRS AT D.L." on August 3, 1980.
- A Certificate of Attendance dated March 17, 1979 from the [REDACTED] University in San Jose, California showing that the applicant attended lectures entitled "Mirror of the Mind."
- A letter apparently from the applicant's sister-in-law in Nigeria with envelope postmarked February 1 without a year apparent and addressed to the applicant at [REDACTED] Street in Santa Ana, California.

On November 23, 2004, the director issued a Notice of Intent to Deny (NOID) stating that the applicant had failed to establish that he entered the United States before January 1, 1982 and resided in continuous unlawful status from that date through 1985. The director determined that the applicant entered in lawful F-1 status on January 14, 1984 and did not violate this status until he began working without permission in 1985. The director found that the affidavit of [REDACTED] contained "insufficient information and without corroborative evidence therefore failed to substantiate [the applicant's] claim" of continuous unlawful residency prior to May 1985. The director also found other evidence submitted by the applicant to demonstrate that he resided in the United States prior to January 14, 1984 not credible. The director observed that the address listed on the applicant's Form I-687 as his residence from 1980 to 1986 differed from the address on an envelope submitted by the applicant. The director also observed that the date on a receipt submitted by the applicant appeared to have been altered from 1991 to 1981. Finally, the director noted that two handwritten receipts submitted by the applicant bearing dates of 1980 and 1982 respectively were printed on receipt forms containing a logo that was not in use prior to 1984.

In response to the NOID, counsel asserted that the evidence—including additional documents submitted with the response—was sufficient to meet the applicant's burden of proof. Counsel contended that the director erred in determining that certain documents submitted by the applicant were fraudulent without conducting forensic evaluation of these documents. Counsel asserted that although some of the evidence submitted by the applicant did not conform to all "technical" requirements, all of the evidence submitted by the applicant was nevertheless credible and should have been considered. Counsel also submitted a declaration from the applicant in which the applicant asserted that he had resided continuously in the United States since entering without inspection in 1980. The applicant also explained that he had used the address of his friend and landlord as his mailing address from 1980 to 1985 instead of the address at which he was actually residing during that period.

In the decision to deny the application dated November 2, 2004, the director stated that "the information [the applicant] submitted . . . failed to overcome all the grounds for denial as stated in the NOID." The director stated that the applicant was admitted to the United States in lawful F-1 status on January 14, 1984, and the evidence showed that the applicant did not violate this status until 1985.

On appeal, counsel asserts that the applicant has met his burden of proving by a preponderance of the evidence that he resided in the United States for the requisite periods. Counsel contends that the director erred in not addressing the evidence submitted by the applicant in response to the NOID, and in dismissing evidence as not credible without due consideration and analysis.

After reviewing all of the evidence in the record, the AAO determines that the submitted evidence is not sufficiently relevant, probative, and credible to meet the applicant's burden of proof.

The AAO first addresses the issue of whether the applicant's admission in lawful status in 1984 renders him ineligible for adjustment of status under the LIFE Act. The evidence shows that the applicant was admitted to the United States in lawful F-1 status on January 14, 1984. The applicant contends that he established unlawful residency in the United States prior to this entry, and was absent from the United States for only a brief period from the date of his departure in December 1983 until the date of his reentry on January 14, 1984.

Pursuant to section 1104(c)(2)(B)(i) of the LIFE Act, the regulations prescribed by the Attorney General under section 245A(g) of the INA that were most recently in effect before the date of the enactment of the LIFE Act shall apply to determine whether an alien maintained continuous unlawful residence in the United States. Therefore, eligibility also exists for an alien who would otherwise be eligible for legalization and who was present in the United States in an unlawful status prior to January 1, 1982, and reentered the United States as a nonimmigrant in order to return to an unrelinquished unlawful residence. 8 C.F.R. §245a.2(b)(9). An alien described in this paragraph must receive a waiver of the inadmissibility charge as an alien who entered the United States by fraud. Section 212(a)(6)(C) [previously number Section 212(a)(19)] of the INA; 8 U.S.C. § 1182(a)(6)(c); 8 C.F.R. § 245a.2(b)(10).

Thus, if the applicant had established unlawful residence in the United States prior to his entry in 1984, his return in F-1 status in 1984 would not necessarily render him ineligible for adjustment of status to permanent resident under the LIFE Act. However, the applicant has failed to demonstrate that he resided in the United States in an unlawful status prior to his entry in 1984.

The evidence submitted by the applicant to demonstrate residency prior to his entry in 1984 is not relevant, probative and credible.<sup>1</sup>

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<sup>1</sup> It should be noted that the record contains two separate Form I-687 applications from the applicant, one signed by the applicant on May 14, 1990 and the other on March 20, 1991. These separate applications contain inconsistent information concerning the year of the applicant's initial entry into the United States and his residences and employment in the United States. The director did not address the issue of these inconsistent applications, apparently considering the May 14, 1990 application only. Nevertheless, the AAO finds that the inconsistencies between these applications further supports the

Although the director did not specifically list all the deficiencies in the evidence submitted by the applicant in her decision, the director did not err in finding that the applicant failed to adequately rebut the adverse information set forth in the NOID. The applicant failed to submit an explanation for the inconsistencies noted by the director in the NOID, other than stating that his family and friends in Nigeria sent mail to [REDACTED] Street rather than his actual address at [REDACTED] Street. Contrary to this assertion, the record also contains two letters from individuals in Nigeria addressed to the applicant at the [REDACTED] Towner Street address.

The applicant did submit additional evidence in response to the NOID, but his evidence contains inconsistencies and lacks significant probative value. The affidavits of Ms. [REDACTED] and Mr. [REDACTED] indicate that the affiants saw the applicant once in 1980 and 1981 respectively, but do not list the applicant's address at that time or indicate that they were aware that he resided in the United States on any date other than the one on which they saw him. The June 10, 1982 notice from [REDACTED] indicating that the applicant was to begin work for the company on June 15, 1982 is addressed merely to [REDACTED] and is not consistent with the affidavit from [REDACTED], owner of [REDACTED] which states that the applicant began working for the company in 1985, or the applicant's Form I-687 application (May 14, 1990 application) which lists 1987 as the year in which the applicant began working for [REDACTED].

Furthermore, in his declaration dated December 13, 2004 and submitted in response to the NOID, the applicant indicated that he first entered the United States without inspection in 1980. The applicant does not provide the month and day of this entry. In an affidavit dated March 25, 1991, the applicant indicated that he first entered the United States in January 1979, and remained in the country until his departure in December 1983. The record also contains a certificate showing that the applicant attended lectures in California in 1979.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* The record shows many inconsistencies in the evidence submitted by the applicant, and it is reasonable to expect the applicant to submit objective evidence that explains and resolve these inconsistencies. However, in spite of being given notice of several of these inconsistencies in the NOID, the applicant failed to adequately explain the observed inconsistencies and submitted evidence that was not only insufficient to resolve the inconsistencies, but was also, on certain material points, inconsistent with evidence previously submitted by the applicant.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or

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director's finding that the applicant failed to submit credible evidence of residency in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5<sup>th</sup> ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the contradictory nature and general insufficiency of evidence, the AAO determines 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 since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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