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U.S. Citizenship
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FILE:

MSC 02 012 60432

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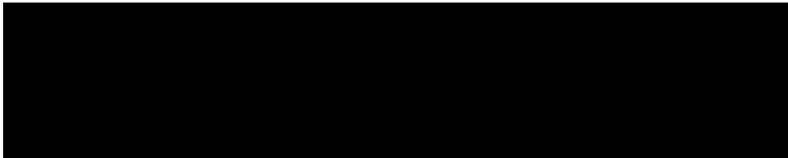
Date: **AUG 26 2008**

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

for 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 (director) in Fairfax, Virginia. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel asserts that the documents submitted by the applicant in support of his claim are sufficient to establish the applicant's presence in the United States from January 1, 1982 through May 4, 1988.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“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.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(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 its amenability to verification. See 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).

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.

The applicant, a native of Ghana who claims to have lived in the United States since April 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on October 12, 2001. As evidence of his residence in the United States during the years 1981-1988 the applicant submitted documents some of which were originally filed in 1992. They include the following:

- A letter of employment from [REDACTED], vice president of Tysons Title Insurance Agency, Inc., in Woodbridge, Virginia, dated January 6, 1992, stating that the applicant was employed as a porter from May 1981 to July 1987, at an annual salary of \$9,000.00.
- A letter of employment from [REDACTED], office manager of American Orthotic and Prosthetic Association, in Alexandria, Virginia, dated January 17, 1992, stating that the applicant was employed as a porter since October 1987, at an annual salary of \$12,000.00.

- A letter from [REDACTED], a resident of Alexandria, Virginia, dated January 29, 1992, stating that he drove the applicant to Canada on August 9, 1987, and that when they arrived at the port of entry in Buffalo, New York, they were allowed to drive through without inspection.

A letter from [REDACTED], a resident of Alexandria, Virginia, dated March 9, 1992, stating that the applicant is his cousin, and that he knows the applicant resided at [REDACTED], Washington, DC, from April 1981 to the present (3/9/92).

An affidavit from [REDACTED], a resident of Alexandria, Virginia, dated March 9, 1992, stating that the applicant is her friend, and that she knows the applicant resided at [REDACTED], Washington, DC, from April 1981 to present (3/9/92).

- An affidavit from [REDACTED], a resident of Bowie, Maryland, dated March 8, 2003, stating that the applicant is his nephew, that the applicant stayed with him when he arrived from Ghana in 1981, and that he provided support to the applicant until he found employment.

In a Notice of Intent to Deny (NOID), dated August 3, 2004, the director, indicated that the applicant had not provided sufficient credible evidence to establish that he resided continuously in the United States from before January 1, 1982, through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

In response, counsel submitted additional documents in the form of letters written to the applicant from his relatives in Ghana with postmarks in the 1980s.

On April 15, 2006, the director issued a Notice of Decision denying the application. The director found that the documents submitted in response to the NOID and the other evidence of record was insufficient to overcome the grounds for denial. The director concluded that the evidence failed to establish that the applicant entered the United States before January 1, 1982 and thereafter resided continuously in the United States in an unlawful status through May 4, 1988, as required for legalization under the LIFE Act.

On appeal, counsel asserts that the documents submitted by the applicant are sufficient to establish that he has been residing in the United States since before January 1, 1982 through May 1988. The applicant submitted no additional documents with this appeal.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de*

novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The employment letters from [REDACTED] of Tysons Title Insurance Agency, Inc., dated January 6, 1992, and from [REDACTED] of America Orthotic and Prosthetic Association, dated January 17, 1992, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they do not provide the applicant's address at the time of employment, do not indicate whether the information was taken from company records, and do not indicate whether such records are available for review. Nor were the letters supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant actually had the jobs during any of the years claimed. In addition, [REDACTED] did not indicate that he knew the applicant prior to 1987.

For the reasons discussed above, the AAO determines that the employment letters have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the years 1981 through 1988.

The affidavits from [REDACTED], and [REDACTED], dated March 9, 1992, and from [REDACTED], dated March 8, 2003, provide no information about the applicant, except for the address he claims in the United States during the 1980s. The affiants provide no details about the applicant's life in the United States and his interaction with the affiants over the years. The letter from [REDACTED], dated January 29, 1992, does not indicate that he knew the applicant prior to 1987. None of the affidavits are accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s.

In addition, the affidavit from [REDACTED], stating that the applicant resided with him beginning in 1981 at [REDACTED], Bowie, Maryland, is contrary to information provided by the applicant on the initial Form I-687 he filed in 1992, as well as another Form I-687 filed in January 2006, where the applicant listed his residence from 1981 to 1992 as [REDACTED], Washington, DC. Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

The letter envelopes from Ghana with postmarks dating in 1981 through 1989 were addressed to the applicant at the following addresses:

- The envelopes postmarked on December 15, 1981, July 1982 and August 1984, were addressed to [REDACTED], Washington, DC, 20018;
- The envelope postmarked in 1985 was addressed to [REDACTED] Hyattsville, MD;
- The envelopes postmarked in 1987 and 1989, were addressed to [REDACTED] Lanham, MD.

The postmarks on the envelopes are clearly fraudulent because none of the stamps affixed to the envelopes were issued by the government of Ghana in the 1980s. The stamp of Mushrooms on the envelopes postmarked July 1982 and July 1985 were not issued by the government of Ghana until July 1993. The stamp of *Amorphophallus Flavovirens* on the envelope postmarked August 1984 was not issued until May 6, 1999. The stamp of *Xiphias Gladius* on the envelopes postmarked August 1987 and September 1989 appears to be part of the series of stamps issued by the government of Ghana on either August 18, 1998 or October 1, 2001. The stamp of the Cape Coast Castle on the envelope postmarked December 15, 1981 appears to be part of the series of stamps issued by the government of Ghana in 1991 or on April 3, 1995. Scott 2006 Standard Postage Stamp Catalogue, Vol. 3, pp. 250-264.

Thus the envelopes submitted by the applicant have no probative value as evidence of the applicant's residence in the United States during the 1980s. In addition, the addresses on some of the envelopes contradicted the information provided by the applicant on the Form I-687 filed on February 12, 2007. On the Form I-687, the applicant listed [REDACTED] Washington, DC as his only residence in the 1980s. There is no listing of [REDACTED] [REDACTED], Hyattsville, MD, or [REDACTED] Lanham, MD, as his residence in the 1980s or at any other time. As previously noted, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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