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U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office: NEW YORK

Date:

JUL 30 2008

MSC 02 204 62159

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. 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 District Director, New York, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant did not establish, by a preponderance of the evidence, his residence in the United States during the statutory period. The director noted that the applicant provided no documentary evidence of his entry into the United States or Canada in 1981 or 1987. The director also noted that the applicant indicated on his Form I-589, Request for Asylum in the United States, that his children were born in the Ivory Coast in 1983 and 1985 and on his Form G-325A, Biographic Information, that he lived in the Ivory Coast from 1982 through 1990. Finally, the director noted that the applicant submitted no evidence in support of his claim of residency in unlawful status during the statutory period.

On appeal, the applicant asserts that he has no documentary evidence of when he first entered the United States in October 1981 because he entered without inspection. The applicant submits an affidavit from the legal custodian of his children stating that their mother was a trader who traveled back and forth to the United States and Africa and that is how his children were born in Liberia. He also submits additional documentation.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 or 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).

On April 22, 2002, the applicant submitted the current Form I-485, Application to Register Permanent Residence or Adjust Status. On March 22, 2004, the applicant appeared for an interview based on his application.

On March 30, 2006, the director sent the applicant a Notice of Intent to Deny (NOID) the application. The district director concluded that the applicant did not establish, by a preponderance of the evidence, as to his residence in the United States during the statutory period. The director noted that the applicant provided no documentary evidence of his entry into the United States or Canada in 1981 or 1987. The director also noted that the applicant indicated on his asylum application that his children were born in the Ivory Coast in 1983 and 1985 and on his G-325A that he lived in the Ivory Coast from 1982 through 1990. Finally, the director noted that the applicant submitted no evidence in support of his claim of residency in unlawful status during the statutory period. The director informed the applicant that he had 30 days from the receipt of the NOID to submit any information the applicant felt was relevant to his case. The applicant requested a 30-day extension to respond to the director’s request but never did.

On August 5, 2006, the director denied the application, finding that the evidence of record did not show that the applicant entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status since that date through May 4, 1988.

On appeal, the applicant asserts that he has no documentary evidence of when he first entered the United States in October 1981 because he entered without inspection. The applicant claims that the mother of his children was a trader who traveled back and forth to the United States and Africa and that is how his children were born in Liberia. He supports this assertion with an affidavit from the legal guardian of his children who lives in Ghana. He submits additional documentation.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period.

The record of proceeding contains the following evidence relating to the requisite period:

- An affidavit sworn to on July 26, 2006, from [REDACTED] states that he has known the applicant since the 1970's in Bassa County, Liberia. He states that the applicant resided with him in Toronto, Ontario, when he arrived in Canada from Liberia in 1980. The affiant states that on August 10, 1981, when his late brother was visiting the United States, the applicant joined him in his car and left behind his personal possessions with the affiant. He states that he spoke regularly by telephone with the applicant after he arrived in the United States in August 1981. He states that in 1986, his apartment was burgled and the applicant's personal belongings were stolen. Based on the telephone conversations with the applicant, the affiant asserts that the applicant has been residing continuously in the United States since 1981. This letter provides no details of the affiant's personal knowledge of the applicant's continuous residence and continuous physical presence in the United States. He does not indicate where in the United States the applicant has lived for the past 25 years or what the applicant has been doing during this time period. He states that they speak regularly but does not specify how often that is and provides no details about the conversations he has with the applicant. This letter can therefore be given little weight as evidence of the applicant's continuous residence during the requisite period;
- A letter sworn to on July 26, 1990, from [REDACTED] simply states that the applicant was his family's guest from January 15, 1987, to February 1987. He states that they provided the applicant with boarding and lodging for the period. This letter is not relevant to the applicant's entry to the United States prior to January 1, 1982, or his continuous residence in the United States during the requisite period;
- An affidavit sworn to on April 22, 2006, in [REDACTED] states that she is the cousin of the mother of the applicant's two children, [REDACTED] states that she is the legal guardian of the children. She states that their mother, [REDACTED], died on June 22, 1997. [REDACTED] states that [REDACTED] was a trader who traveled back and forth from Africa to the United States. She states that on one of her trips to the United States in 1982, [REDACTED] met the applicant and got involved with him. She states that this involvement resulted in the birth of a girl named [REDACTED] on March 3, 1983, in Liberia. She further states that another child was born to the couple on October 9, 1985, also in Liberia. She states that both children were

born in [REDACTED], but due to war and unrest sought refuge with their mother in [REDACTED]. This affidavit serves primarily to explain how the applicant's children were born outside of the United States in 1983 and 1985 while the applicant was continuously physically present in the United States from 1981 to 1987. It can be given little weight as evidence of the applicant's continuous residence during the requisite period; and,

An affidavit dated April 22, 2006, from [REDACTED] states that she has known the applicant since 1981 and that he is the brother of her friend who lives in Liberia. She states that upon his arrival to New York in 1981 resided with her and her two children until 1989. She states that he moved to another address in the Bronx in 1989. Ms. Shandorf provides no evidence that she was physically present in the United States during the dates mentioned in the affidavit and offers no details of the circumstances of the applicant's residence in her home during eight years. As such, it can be afforded little evidentiary weight of the applicant's continuous residence during the requisite period.

For the reasons noted above, these affidavits can be given little evidentiary weight and are of little probative value as evidence of the applicant's residence and presence in the United States for the requisite period. In addition, although the applicant has submitted numerous affidavits in support of his application, he has not provided any contemporaneous evidence of residence in the United States during the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality.

The only other documentation in the record is a travel document issued to the applicant on August 14, 1991, by the Liberian Embassy in Washington, D.C.. This evidence does not address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

Furthermore, several contradictions and inconsistencies exist between information provided by the applicant in support of his LIFE Act application and in support of his asylum application. On his LIFE Act application, the applicant asserts that he first entered the United States in October 1981 and has resided continuously in the United States from that date to the present. He has indicated that during that time he departed the United States only once, for about one month, to visit friends in Canada in 1987. In support of his LIFE Act application he did not mention his exit from Liberia in August 1990, as indicated on his Form I-589. According to his Form I-589 and his rebuttal in response to the Notice of Intent to Deny his asylum application, the applicant was born in Liberia in 1945 and lived there until 1990 when he and his family were forced to flee. Specifically, he stated that during the elections in Liberia in 1985, he demonstrated his support of [REDACTED] National Democratic Party of Liberia (NDPL) by going into towns and villages in Liberia and persuading people to join the NDPL and vote for Doe. He stated that he fled Liberia in 1990 to avoid persecution by the [REDACTED]. 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 petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has not attempted to explain or reconcile these significant inconsistencies nor has he submitted competent objective evidence pointing to where the truth lies about his whereabouts during the LIFE Act statutory period.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have first entered the United States without inspection in October 1981, and to have resided for the duration of the requisite period in New York. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, or automobile, contract, and insurance documentation) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (I) and (K). The documentation provided by the applicant consists solely of affidavits. These third-party affidavits lack specific details as to how the affiants knew the applicant – how often and under what circumstances they had contact with the applicant – during the requisite time period from prior to 1982 through 1988.

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 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 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the insufficiency in the 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, resided in this country in an unlawful status continuously since that time through May 4, 1988, and maintained continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

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