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U.S. Citizenship
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FILE:

Office: BOSTON (PROVIDENCE, RI)

Date: **JUL 30 2008**

MSC 01 296 60197

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. 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 application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Boston, Massachusetts, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined the applicant had failed to demonstrate his eligibility for permanent residence status under section 1104 of the LIFE Act.

On appeal, counsel for the applicant submits a brief statement.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986, through May 4, 1998.

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 states 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.

The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documents that an applicant may submit. While affidavits "may" be accepted (as "other relevant documentation") [See 8 C.F.R. § 245a.2(d)(3)(vi)(L)] in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's unlawful continuous residence during the requisite time period.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v), states that attestations from churches, should: identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided during the membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

The applicant filed the current Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act on May 13, 2002. On May 24, 2004, the applicant was interviewed in connection with this application.

The applicant, a native and citizen of Nigeria, claims to have entered the United States in June 1981 by using a passport and nonimmigrant visa issued to another person. He further claims to have departed on only one occasion - from September to October 1987 - in order to visit his sick mother in Nigeria and returned to the United States (again using a passport and visa belonging to another person). However, the record reflects that the applicant had a child born in Nigeria on December 29, 1985, and that in an interview dated May 22, 2006, the applicant claimed to have entered the United States in 1982.

The issue in this proceeding is whether the applicant has demonstrated that he entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988, and that he maintained continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988.

A review of the record reveals that the applicant provided the following photocopies of documentation in an attempt to establish that he entered the United States prior to January 1, 1982, and resided in continuous unlawful status from then through May 4, 1988:

1. A letter, dated November 5, 2002, from [REDACTED] General Overseer, of Salem Gospel Mission International, Ibadan, Nigeria, stating that "...[the applicant] is a member of Salem Gospel Mission Church, USA Assembly. He joined the church in 1982..." Information obtained by Citizenship and Immigration Services (CIS) reveals that Salem Gospel Mission International, located at [REDACTED] Avenue, Providence, Rhode Island, was not incorporated in the United States until September 1984, and that its president, [REDACTED] who had indicated that he was a Bishop in Nigeria, lived at [REDACTED] - the same address given by Mr. [REDACTED], the affiant listed in No.7, below.
2. Documentation from Old Stone Bank, Providence, Rhode Island, including: (a) a "Truth in Lending Statement," dated November 29, 1985; (b) an "Additional Information Request," dated December 10, 1985; a "Good Faith Estimate of Settlement Charges," dated November 29, 1985; and, bank statements for the one-month periods ending December 5, 1982, and March 07, 1984. These documents

appear to be altered in that the type-set/font for the applicant's name and address is completely different from the type-set/font for the rest of the data on the documents.

3. A report, dated December 1986, from the State of Rhode Island Medical Center, stating, in part, "...with the patient blindfolded as **she** was unable to keep **her** eyes closed..." Aside from the fact that the report refers to a female patient, again, the type-set/fond on the report regarding the applicant's name is completely different (much darker and of a different size and style) from the type-set/font contained in the rest of the report.
4. Photocopies of generic rent receipts issued to the applicant by _____ for various months dating from September 1981 through December 1984. At that time, the applicant claimed to have lived at _____ Rhode Island. Property transfer records obtained by CIS reveal that there was no evidence that _____ ever owned the property.
5. A statement from Columbus National Bank of Rhode Island for the period ending July 20, 1983. As noted in Nos. 2 and 3, above, the type-set/font on the statement noting the applicant's name and address is completely different from the type-set/font contained in the rest of the statement.
6. Photocopies of letters, dated December 2005, from _____ - both of Providence, Rhode Island, stating that the applicant had been in the United States since 1981 - that they were "physically present" when he arrived. While not required, these letters are not accompanied by proof of identification or any evidence that the affiants actually resided in the United States during the relevant period. The affiants are generally vague as to how they date their acquaintances with the applicant, how often and under what circumstances they had contact with the applicant during the requisite period, and lack details that would lend credibility to their alleged 24 year relationships with the applicant. It is unclear as to what basis the applicants claim to have direct and personal knowledge of the events and circumstances of the applicant's residence in the United States. As such, the statements can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.
7. A Western Union receipt, dated January 15, 1987. However, the version of this particular receipt was not available until June 1995 (noted as the revision date of the receipt in the bottom right-hand corner).

In a Notice of Intent to Deny (NOID), dated January 31, 2006, the district director noted the various discrepancies and alterations encountered in the documentation provided, and granted the applicant 30 days in which to explain the discrepancies or rebut any adverse information. In response, the applicant submitted a letter, dated February 23, 2006, explaining that: (1) his membership in the

Salem Gospel Mission should not be based on the date the church was incorporated because 98% of African churches in Rhode Island and many other states start fellowship/service in homes before they are registered or incorporated; (2) he knows that [REDACTED] have resided in the United States since the 1970's; (3) the owner of the house at [REDACTED] was named [REDACTED] (or [REDACTED] but that [REDACTED] collected the rent; and, (4) the bank statements and letters were what he received from the banks – he does not know anything about the lettering.

In a Notice of Decision (NOD), dated April 4, 2006, the district director denied the application.

On appeal, counsel asserts that almost all of the district director's contentions in the NOD show an inability of the interviewing officer to understand the accent of the applicant, and that the applicant has not misrepresented any information. Counsel concludes that the applicant has resided in the United States for the requisite period, is statutorily and factually eligible for adjustment of status under the LIFE Act, and that denial of the application will be a denial of the applicant's right to due process.

Counsel's assertions are not persuasive. The application was denied on April 4, 2006, after a detailed NOID was issued regarding numerous discrepancies in the applicant's submissions which were not adequately addressed by the applicant in his response to the NOID. There is no evidence that the applicant's accent had anything to do with the substance of the denial of the application.

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).

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, 591-92 (BIA 1988).

The AAO concludes that the applicant has not met his burden of proof. Aside from inconsistencies in his testimony and the record, as noted above, he has not submitted sufficient credible evidence to establish, 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.

It is noted that a Form I-130, Petition for Alien Relative, filed by [REDACTED] on the applicant's behalf to qualify him as the spouse of a United States citizen, and a Form I-485, filed by the applicant in connection with that application on September 20, 1995, were denied on April 4, 2006.

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