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U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE:

[REDACTED]

Office: BALTIMORE Date:

JUN 24 2008

MSC 02 142 61625

IN RE:

Applicant:

[REDACTED]

APPLICATION:

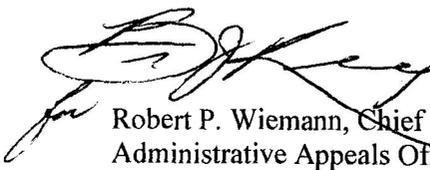
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[REDACTED]

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.


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

On appeal, the applicant asserted that she has been physically present in the United States since June 1981 and has submitted affidavits from acquaintances, a letter from a pastor, and school transcripts to establish her continuous residence during the requisite period. The applicant submitted copies of documents previously provided along with additional evidence in support of her appeal. The applicant requested an extension of 90 days in which to submit a brief and/or evidence. However, more than two years later, no additional correspondence has been presented by the applicant.

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. Section 1104(c)(2)(B)(i) of the LIFE Act; 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).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she continuously resided in the United States in an unlawful status prior to January 1982. Here, the applicant has failed to meet this burden.

At the time the applicant filed her Form I-687 application, she submitted a letter and a certificate of identity from the Consulate General of Ghana in New York, which indicated that the applicant was born in Tamale, Ghana on December 22, 1962. The applicant also submitted an affidavit notarized August 15, 1989, from [REDACTED], who attested to the applicant's residence at [REDACTED] Bronx, New York since 1981.

On August 12, 2003, the applicant was requested to submit: 1) evidence of her presence in the United States from November 6, 1986, to May 4, 1988; 2) evidence of her entry prior to January 1, 1982; 3) a copy of her expired passport; 4) her birth certificate or evidence from a local civil registrar that the birth certificate was not available.

In response, the applicant submitted affidavits from [REDACTED], [REDACTED], and [REDACTED] who attested to the applicant's residence in the United States since June 1981, and a college transcript from Morgan State University in Columbia, Maryland for the 1986 and 1987 summer and fall semesters and the 1987 spring semester. The applicant also submitted: 1) a copy of a Nigerian passport that reflected she was born in Calabar, Nigeria; 2) two declarations dated August 15, 2001, and September 5, 2003, from [REDACTED] who attested that he was the father of the applicant, that the applicant was born in Nigeria on December 22, 1962, and that her birth was not officially registered as there was no birth registry at the Calabar Local Government Area; 3) a letter dated September 11, 2003 from a local government office in Akamkpa, Nigeria certifying the birth of the applicant on December 22, 1962, and indicating that there was no registry of birth at the Akampa Local Government Area of Cross River State of Nigeria; and 4) a social security printout reflecting wages earned in 1984 (\$1,788.00) and 1985 (\$661.00).

On March 3, 2005, the director issued a Notice of Intent to Deny, which advised the applicant that while the social security printout reflected wages earned in 1984 and 1985, she had failed to submit evidence of her claimed employment at Mayfair Supermarket from July 1981 to October 1985 earning \$8,500 annually and at Massanger Fervy from November 1985 to August 1988 earning \$7,200 annually. The applicant was also advised that none of the affiants provided a telephone number or address and, therefore, the affidavits were not amenable to verification by the Citizenship and Immigration Services, and that the college transcript contradicted the information contained in [REDACTED]'s affidavit. The director noted that the remaining documents would not be considered as they attested to the applicant's presence subsequent to the period in question.

In addition, the director cited 8 C.F.R. 103.2(b) (2) and indicated that the applicant had "failed to submit any secondary evidence, a statement as to why secondary evidence is unavailable, and a second affidavit of her birth." The director determined that the applicant had failed to provide credible evidence of her birth record and of establishing her true identity.

The director indicated that the applicant had failed to demonstrate the length of her 1987 absence from the United States. However, a review of the Form I-687 application indicates that the applicant listed her absence from the United States as June 1, 1987 to June 20, 1987.

It is noted that the applicant was also advised of her failure to pass the United States history and government test on September 12, 2003. The director indicated that if the applicant overcomes the grounds set forth in the

Notice of Intent to Deny, she would still need to demonstrate the required knowledge of the civics portion of the test.

The applicant, in response, submitted:

- The original declaration dated August 15, 2001, from [REDACTED].
- A notarized affidavit from [REDACTED] of Silver Spring, Maryland, who indicated that he has known the applicant since 1981 as his wife's childhood friend and "we have since grown up to become good family friends."
- A notarized affidavit from [REDACTED] of Laurel, Maryland, who indicated he has known the applicant since 1981. The affiant attested to the applicant's membership in the church she attends and to her moral character.
- A notarized affidavit from [REDACTED], pastor of The Holy Order of Cherubim & Seraphim Movement Church in Maryland, who indicated that he first met the applicant in 1981 at a friend's marriage ceremony and has become good friends with the applicant since that time.
- A college transcript from Montay College, formerly known as Felician College, in Chicago, Illinois, which indicated that the applicant was admitted in January 1983 and attended the 1983 spring and fall semesters and the 1984 spring semester. It is noted that the applicant's address is listed as [REDACTED] Manchester, New Hampshire.
- A letter from [REDACTED], a representative of the Archdiocese of Chicago who attested that the college transcript from Montay College was a true copy.¹ The representative indicated that the applicant attended Montay College between 1982 and 1984.

The director, in denying the application, noted the college transcript from Montay College clearly indicated that the applicant was admitted in January 1983 and that the applicant was enrolled in courses for the 1983 spring and fall semesters. The director determined that the affidavits submitted from [REDACTED] Mr. [REDACTED] and [REDACTED] failed to provide information regarding the applicant's residence and presence in the United States during the requisite period.

The director also determined that the applicant had not provided any secondary evidence of her birth, any statements why secondary evidence was unavailable and an affidavit from a second individual attesting to her birth. At face value, the documents submitted, namely the affidavits from the father and local government office in Akamkpa, Nigeria would be sufficient in establishing the applicant's birth and identity. However, in the instant case, the applicant has put forth contradicting documents that raise questions to the authenticity of her identity. As previously noted, the applicant provided a letter and a certificate of identity from the Consulate General of Ghana in New York, which indicated that she was born in Tamale, Ghana. In addition, the applicant claimed on her Form I-687 application that she was born in Tamale, Ghana and was a citizen of Ghana. No statement from the applicant or the Consulate General of Ghana has been submitted to resolve these contradicting documents. As such, the applicant's true identity has not been established.

On appeal, the applicant submits additional college transcripts from:

¹ Montay College closed on July 31, 1995, and the school's records are maintained at the Archdiocese of Chicago, Archives and Records Center in Chicago, Illinois.

- Southern New Hampshire University in Manchester, New Hampshire for the 1985 and 1986 winter semesters.
- Notre Dame College in Manchester, New Hampshire indicating that the applicant was admitted on September 5, 1985, took several courses during 1985, and withdrew on September 4, 1987.

The AAO does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States since before January 1, 1982, through May 4, 1988, as she has presented contradictory and inconsistent documents, which undermines her credibility. Specifically:

1. The applicant submits documents indicating that she was attending college in Chicago, Illinois in 1983 and 1984, in New Hampshire in 1985 and 1986, and in Columbia, Maryland in 1986 and 1987. [REDACTED], however, attested that the applicant resided with him in Bronx, New York during the requisite period. The affiant made no mention of the applicant residing in Illinois, New Hampshire or Maryland during the requisite period.
2. [REDACTED] attested that the applicant resided with him at [REDACTED], Bronx, New York during the requisite period. However, the applicant claimed on her Form I-687 application to have resided at this address from April 1987.
3. As previously noted above, [REDACTED]'s assertion that the applicant attended Montay College between "1982 and 1984" is not supported by the transcript provided. The transcript clearly indicates an admittance date of January 1983.
4. The applicant submits transcripts from Montay and Notre Dame Colleges, and Southern New Hampshire University, but provides no explanation why she did not claim on her Form I-687 application residence in Illinois and New Hampshire during the requisite period. The fact that the applicant failed to disclose residences in these states raises questions to the authenticity of the college transcripts from these institutions.
5. The applicant claimed on her Form I-687 application to have resided in Baltimore, Maryland from June 1981 to April 1987. Except for the college transcript from Morgan State University, the applicant provided no evidence to corroborate her claimed residence during this period.
6. Although item 36 of the Form I-687 application requests the applicant to list the full name and address of each employer during the requisite period, the applicant failed to provide complete information. As such, the applicant's alleged employment is not amenable to verification by Citizenship and Immigration Services.
7. The remaining affiants attested to the applicant's residence since 1981, but no attestation to the applicant's actual residence in the United States were indicated, and the affiants provided no details regarding the nature or origin of their relationships with the applicant or the basis for their continuing awareness of the applicant's residence.
8. The applicant, in response, to the Notice of Intent to Deny, indicated that she was submitting a declaration from "my pastor in my church of worship." The affidavit, however, from [REDACTED], does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the pastor does not explain the origin of the information to which he attests, and the applicant did not list any affiliation with a religious organization during the requisite period at item 34 on her Form I-687 application.

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).

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 credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met her burden of proof. The applicant has not established, by a preponderance of the evidence, that she 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.

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