



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

L2



FILE:



MSC 02 191 60459

Office: NEW YORK CITY

Date:

OCT 01 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.

John H. Vaughan
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 director in New York City. 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 she 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 director failed to give sufficient weight to the affidavits submitted on behalf of the applicant to establish her claim. In counsel's opinion, the evidence submitted is sufficient to establish that the applicant resided in the United States continuously in an unlawful status from before 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 November 1981, filed her application for legal permanent resident status under the LIFE Act (Form I-485) on April 9, 2002. As evidence of her residence in the United States during the years 1981-1988 the applicant submitted a series of letters and affidavits, some of which dated back to 1991. They included the following:

- A letter from [REDACTED], the pastor at The New Hope Revival Church, Inc, in Brooklyn, New York, dated July 13, 1991, stating that the applicant had been an active member of the congregation since December 1981.
- Affidavits from [REDACTED] and Gladys Mensah, residents of Bronx, New York, dated July 12, 1991, stating that they had personal knowledge that the applicant resided in the United States from 1981 to the present (July 1991) at 140-5 Einstein Loop in the Bronx, and that they first met the applicant at an African party and at the Bronx Zoo with some friends, respectively.

- An affidavit from [REDACTED]—a resident of Bronx, New York, dated July 29, 1991, stating that he had personal knowledge that the applicant resided in the United States from December 1981 to the present (July 1991) at 140-5 [REDACTED] in the Bronx, and that the applicant is a friend.
- An affidavit from [REDACTED] a resident of Scarborough, Ontario, Canada, dated October 7, 1991, stating that he drove the applicant from New York on July 11, 1987, to Toronto, Canada and back to New York on July 20, 1987. Mr. [REDACTED] asserted that when they reached the border of the United States and Canada they showed their Ghanaian passports with Canadian resident permits and were allowed to cross the border. According to [REDACTED] the two returned to New York the same way.
- An affidavit from [REDACTED] a resident of York, Ontario, dated March 11, 1991, stating that the applicant is his cousin, that he invited the applicant to visit him in Canada, that on July 1, 1987, the applicant arrived at his home in Canada, assisted by a person named “[REDACTED]” and that on July 31, 1987, [REDACTED] picked the applicant up and took her back to the United States.

Affidavits from [REDACTED] residents of Bronx, New York, dated in January 2002, stating that they have knowledge that the applicant resided at these addresses in the United States: [REDACTED], [REDACTED], from 1981 to an unspecified date; [REDACTED], [REDACTED], from an unspecified date to April 1996; [REDACTED], [REDACTED], from April 1996 to November 2001; and [REDACTED], [REDACTED] York, from November 2001 to the present (January 2002); and that they have each visited the applicant during the period attested.

On April 16, 2007, the director issued a Notice of Intent to Deny (NOID), stating that the applicant had not submitted sufficient credible evidence of her residence in the United States from November 1981 until May 4, 1988. The director noted that the affidavits appeared neither credible nor amenable to verification. He also indicated that the trip to Canada in 1987 may have disrupted the applicant’s continuous residence in the United States during the statutory period. The applicant was granted 30 days to submit additional evidence.

In response the applicant submitted one updated affidavit, one copy of a previously submitted affidavit, and one new affidavit from [REDACTED] a resident of Bronx, New York, dated May 8, 2007. [REDACTED] states that she has knowledge that the applicant resided in the United States from November 1981 to the present (May 2007), and that she visited the applicant during the period attested. [REDACTED] listed the same addresses and time frames for the applicant as [REDACTED] on their affidavits in 2002.

On June 25, 2007, the director issued a Notice of Decision denying the application. The director found that the applicant's response and additional documentation were insufficient to overcome the grounds for denial as stated in the NOID. The director also declared that the applicant's testimony that she flew from Ghana to Canada without assistance is not credible because the applicant was only ten years old at that time. The director concluded that the evidence of record 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 director did not give sufficient weight to the affidavits submitted on behalf of the applicant to establish her claim. In counsel's view, the evidence of record is sufficient to establish the applicant's eligibility for legalization under the LIFE Act.

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 she 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 she has not.

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period for LIFE legalization. For someone claiming to have lived in the United States since November 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary or secondary evidence during the following seven years through May 4, 1988.

The letter from the pastor of The New Hope Revival Church, Inc. does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The letter from the [REDACTED] dated July 13, 1991, does not state where the applicant lived at any point in time between 1981 and 1991. The letter does not indicate how and when Mr. [REDACTED] met the applicant, and whether the information about her membership since December 1981 was based on [REDACTED] personal knowledge, church records, or hearsay. Since [REDACTED] letter does not comply with sub-parts (D), (F), and (G) of

8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that it has little probative value. The letter is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The affidavits by [REDACTED] dated in 1991; by [REDACTED] dated in 2007, all have minimalist or fill-in-the-blank formats with little personal input by the affiants. While they all claim to have known the applicant since 1981, the affiants provide almost no information about her life in the United States and their interaction with her over the years. Nor are the affidavits 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 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 affidavits from [REDACTED] dated March 11, 1991, and [REDACTED] dated October 7, 1991, only attested to the applicant's absence from the United States in 1987. They provide no information about the applicant's residence in the United States from before January 1, 1982 through May 4, 1988. Thus the affidavits 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 envelope addressed to the applicant in care of [REDACTED] appears to have a postmark date of either June 4, 1981, or June 4, 1991. If the postmark date is June 4, 1981, it is clearly fraudulent because the stamp of Scorpion Weight on the envelope was not issued by the government of Ghana until December 12, 1983. See Scott 2006 Standard Postage Stamp Catalogue, Vol. 3, p. 245. If the postmark date is June 4, 1991, the envelope has no probative value as that date is beyond the statutory period for LIFE legalization.

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.