

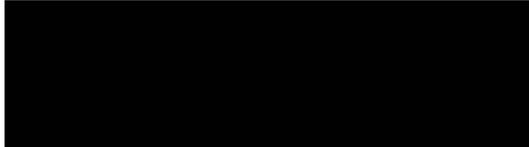
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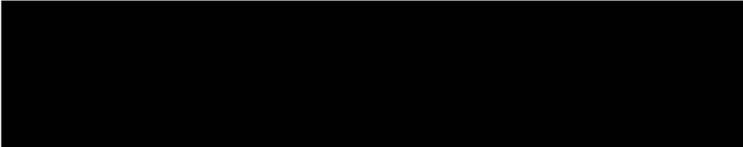


FILE: [REDACTED]
MSC 02 043 63667

Office: NEW YORK CITY

Date: **OCT 03 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 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 applicant submitted sufficient evidence to establish that she resided continuously in the United States in an unlawful status during the statutory period required for adjustment under the LIFE Act. Counsel further asserts that the director's decision to deny because the applicant failed to submit corroborating evidence of her name change in Jamaica was inadequately explained and unreasonable.

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 Jamaica who claims to have lived in the United States since April 1981, filed her application for legal permanent resident status under the LIFE Act (Form I-485) on November 12, 2001. As evidence of her residence in the United States during the years 1981-1988 the applicant submitted a series of letters and affidavits, which included the following:

- A letter from [REDACTED] of East New York SDA (Seventh Day Adventist) Church in Brooklyn, New York, dated March 3, 2004, stating that the applicant has been a member of the church since 1981, that she has supported the church financially as well as being a member of the Sanctuary Choir.

A letter from Reverend [REDACTED] of United Deliverance Church of God, Inc. in Brooklyn, dated April 2, 1990, stating that he has known the applicant – a resident of [REDACTED], in Brooklyn – for the past seven years.

An affidavit from [REDACTED] a resident of Brooklyn, New York, dated April 11, 1990, stating that the applicant lived with and worked for her as a “days worker” from 1981 to 1984.

An affidavit from [REDACTED], a resident of Brooklyn, New York, dated April 11, 1990, stating that the applicant had worked for her since March 1986 for three days a week.

In a Notice of Intent to Deny (NOID), dated March 7, 2005, the director indicated that the applicant had not provided sufficient credible evidence to establish that she resided continuously in the United States from before January 1, 1982, through May 4, 1988. The director noted that only two of the affiants claimed to know the applicant before January 1, 1982, and their affidavits were neither credible nor amenable to verification. The director cited inconsistencies (1) between the applicant’s testimony that she had only one absence from the United States in 1982 when she traveled to Jamaica for one month and information in the record indicating that the applicant applied for and was granted a name change in Jamaica in March 1988, and (2) regarding her church membership in the 1980s. The director concluded that the inconsistencies called into question the veracity of the applicant’s claim that she had resided continuously in the United States from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988. The applicant was given 30 days to submit additional evidence.

On August 11, 2003, the applicant submitted a rebuttal to the director’s NOID. In her response the applicant provided some explanations for the inconsistencies cited in the NOID. The applicant also submitted additional documentation, including the following:

A second letter from [REDACTED], dated March 28, 2005, providing more details to her previous letter of May 4, 1990. Ms. [REDACTED] attested that the applicant was employed as a housekeeper from 1981 to 1984, including light housework and cooking.

- A letter from [REDACTED] a resident of Westmoreland, Jamaica, dated March 3, 2005, stating that the applicant is her sister-in-law and that she took care of the applicant’s name change in Jamaica, that she paid the sum of 4,000.00 Jamaican dollars to procure the name change in Jamaica while the applicant was in the United States.
- A second letter from [REDACTED] of East New York SDA Church, dated March 22, 2005, stating essentially the same information contained in his March 3, 2004 letter, accompanied by a copy of the church’s brochure.
- A letter from [REDACTED] a resident of Brooklyn, New York, dated March 19, 2005, stating that she has known the applicant since 1981 and that the applicant took care of her grandparents from 1981 until 1995.

- A letter from [REDACTED], a resident of Brooklyn, dated March 28, 2005, stating that the applicant lived in her basement apartment located at [REDACTED], Brooklyn, New York, starting in late 1985, and that she got a telephone for the applicant in the name of [REDACTED], which she described as the applicant's "pet name."

A bill statement from New York Telephone, dated December 28, 1986, addressed to [REDACTED] at [REDACTED], Brooklyn, New York.

- An affidavit from [REDACTED], a resident of Brooklyn, dated March 22, 2005, stating that he has known the applicant for the past twelve years.

On September 22, 2006, the director issued a Notice of Decision denying the application. The director determined that the applicant's response and the additional documentation were insufficient to overcome the grounds for denial as stated in the NOID.

On appeal, counsel asserts that the director incorrectly denied the application based solely on the applicant's failure to provide corroborating evidence of her name change in Jamaica in 1988. Counsel asserts that the director's reliance on lack of corroborating evidence in denying the application is contrary to case law and unexplained in the decision. In counsel's opinion, the evidence in the record is sufficient to establish that the applicant has continuously resided in the United States in an unlawful status from 1981 through 1988. Counsel submitted no additional documentation with the 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 AAO disagrees with counsel's assertion that the director denied the application based solely on the applicant's failure to submit corroborative evidence of her name change in Jamaica in March 1988. 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. Like the director, the AAO determines that she has not.

The letters from the pastor of East New York SDA Church do 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 letters from [REDACTED], dated March 3, 2004 and March 22, 2005, state vaguely that the applicant has been a member of the church "since 1981," but do not state exactly when she joined. They do not state where the applicant lived at an an oint in time between 1981 and 1988. The letters do not indicate how and when [REDACTED] met the applicant, and whether the information about her being a church member since 1981 was based on [REDACTED]'s personal knowledge, church records or hearsay. Since [REDACTED]'s letters do not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that they have little probative value. The letters are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The letter from [REDACTED], dated April 2, 1990, stating that he had known the applicant for the past seven years, provided no detailed information about the applicant's life in the United States and her interaction with the affiant over the years. The affiant did not provide any details as to the circumstances of meeting the applicant, where she lived, and where she worked during the 1980s. The letter was not accompanied by any documentary evidence from the affiant – such as photographs, letters, and the like – of his personal relationship with the applicant in the United States from 1983 onwards. In view of these substantive shortcomings, the AAO finds that the letter has little probative value. It is not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

The affidavit from [REDACTED], dated March 22, 2005, states that he had known the applicant for the past twelve years, which would be back to 1993. Since the affidavit provides no information about the applicant's residence in the United States from before January 1, 1982 through May 4, 1988, it has no probative value in this proceeding

The affidavits from [REDACTED], dated April 11, 1990, and March 28, 2005, from [REDACTED] dated April 11, 1990, and from [REDACTED] dated March 19, 2005, claiming to have employed the applicant in the 1980s, as well as the letter from [REDACTED] dated March 28, 2005, all have minimal information about the applicant. **The authors provide almost no information about the applicant's life in the United States and her interaction with them over the years.** None of the affidavits or letters are accompanied by evidence of the authors' own identification and residence in the United States during the period attested. In addition, none of the affidavits and letters is accompanied by any documentary evidence from the authors – such as photographs, letters, and the like – of their **personal relationship** with the applicant in the United States during the 1980s. Furthermore, [REDACTED] did not claim to have known the applicant prior to 1986, [REDACTED] did not claim to have known the applicant prior to 1985, and [REDACTED] did not claim to know the applicant's whereabouts after 1984.

In view of these substantive shortcomings, the AAO finds that the affidavits and letters 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 bill statement from New York Telephone dated December 28, 1986, has little probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988. The statement was addressed to [REDACTED], which according to [REDACTED] is the "pet name" of the applicant. The statement is evidence that the applicant may have resided in the United States sometime in 1986, but it does not show that she resided in the United States before 1986, much less before January 1, 1982. The statement from New York Telephone is therefore not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has 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, 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.