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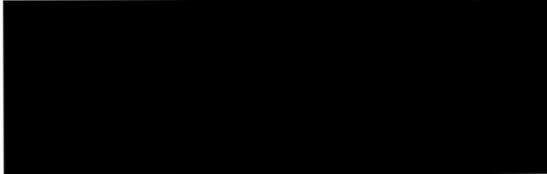
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 245 61646

Office: BALTIMORE, MARYLAND

Date: APR 09 2009

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 forwarded to the U.S. Citizenship and Immigration Services National Records 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and you will be contacted.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because he found that the evidence in the record failed to demonstrate that it is more likely than not that the applicant resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988.

On appeal, the applicant indicated that the evidence does demonstrate that he resided continuously in the United States throughout the statutory period, and that he is otherwise qualified to adjust to lawful permanent resident status under the LIFE Act.

The AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO’s *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.¹

An applicant for permanent resident status under section 1104 of the LIFE Act must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date through May 4, 1988. *See* LIFE Act § 1104(c)(2)(B) and 8 C.F.R. § 245a.11(b).

The regulation at 8 C.F.R. § 245a.15(c) provides, in relevant part, that an alien shall be regarded as having resided continuously in the United States if:

- (1) 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.

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).

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

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 application and other statements of the applicant, both oral and written, are evidence to be considered. *See Matter of E-M-*, 20 I&N Dec. 77 at 79. The applicant's statements must not be the applicant's only evidence used to establish eligibility, but they should be viewed as valid evidence. *Id.*

The absence of contemporaneous evidence is not necessarily fatal to the applicant's claim of continuous residence in the United States during the statutory period. *See id.* at 82-83. Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence. *See id.*

Documentary evidence may be in the format prescribed by U.S. Citizenship and Immigration Services (USCIS) regulations. *See id.* at 80. For example, 8 C.F.R. § 245a.2(d)(3)(i) states that a letter from an employer should be signed by the employer under penalty of perjury and "state the employer's willingness to come forward and give testimony if requested." *Id.* Letters from employers that do not comply with such requirements do not have to be accorded as much weight as letters that do comply. *Id.* However, even if not in compliance with this regulation, a letter from an employer should be considered as a "relevant document" under 8 C.F.R. § 245a.2(d)(3)(iv)(L). *Id.* Also, affidavits that have been properly attested to may be given more weight than a letter or statement. *Id.* Nonetheless in determining the weight of a statement, it should be examined first to determine upon what basis it was made and whether the statement is internally consistent, plausible and credible. *Id.* What is most important is whether the statement is consistent with the other evidence in the record. *Id.*

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. *Id.* at 79-80. 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.* at 80. 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 or 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 petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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, to deny the application or petition.

At issue in this proceeding is whether the applicant is able to establish that he resided continuously in the United States from some date prior to January 1, 1982 through May 4, 1988, and whether the applicant is admissible to the United States. Here, the applicant has not met that burden.

On or near September 30, 1990, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On June 2, 2002, he filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The record includes statements and contemporaneous evidence relating to the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988, and that he is otherwise eligible to adjust, such as:

- 1) The statement of [REDACTED], Congress of Racial Equality, Brooklyn, New York, written on Congress of Racial Equality letterhead stationery, which indicates that [REDACTED] has known the applicant since 1981. The letterhead uses Old English font. In Old English lettering the capital letter "I" in [REDACTED] resembles the letter "D" as written in a contemporary English font. In the signature line, [REDACTED] name is typed: [REDACTED] s, and the signature clearly reads [REDACTED]
- 2) The statement of [REDACTED] which indicates that the applicant resided with [REDACTED] at [REDACTED], New York City from January 1981 through June 1983.
- 3) The statement of [REDACTED], Manager, [REDACTED] which indicates that the applicant resided at this hotel at [REDACTED], New York City from January 1981 through January 1983.
- 4) The Form I-687 which the applicant signed under penalty of perjury and on which the applicant specified at item 35 that he was absent from the United States only once during the statutory period and that absence occurred during July/August 1983.
- 5) A copy of the applicant's passport which indicates that the applicant was in Abidjan, Cote D'Ivoire on September 30, 1987, the date his passport was renewed.
- 6) A copy of the applicant's Cote D'Ivoire National Identity Card which indicates that the applicant was in Abidjan, Cote D'Ivoire on November 12, 1987, the date that card was issued to him. The back of the card displays an imprint of the fingerprint of the applicant's left index finger. The card specifies that the applicant resided in Koumassi at the time the card was issued.

- 7) The attestation of [REDACTED] the Chief of Police, Koumassi, Abidjan, Cote D'Ivoire dated August 4, 1992 which indicates that the Cote D'Ivoire National Identity Card produced on the applicant's behalf on November 12, 1987 was generated in Koumassi, Abidjan and was dispatched to the applicant in Washington. This typewritten statement is not on letterhead stationery. In the title of the document the word: "ATTESTATION" is misspelled as "TTESTATION".
- 8) The statement of [REDACTED] Advisor, Mission Permanent de la Republique De Cote D'Ivoire, New York City dated November 5, 1992 which indicates that the attestation of [REDACTED] referred to at number 8 above is an official document and therefore it is a valid document. A seal which indicates that this document was issued by an office of the Cote D'Ivoire government located in the United States is placed directly over the title and signature of [REDACTED] such that it obscures both. There is no explanation provided as to why the identity card was sent to Washington if the applicant was living in Brooklyn in 1987 as he is claiming and if Cote D'Ivoire had a government office in New York City as indicated by this statement and other evidence in the record. Also no explanation is provided for why the card itself indicates that the applicant resided in Koumassi on November 12, 1987.
- 9) A copy of the applicant's passport which indicates that he entered the United States as a B-2 visitor on August 6, 1983 at New York City.
- 10) The Form I-690, Application for Waiver of Grounds of Excludability (Sec. 245A or Sec. 210 of the Immigration and Nationality Act) which has not been adjudicated.

Other than the copy of the applicant's passport and national identity card, the record does not include evidence that might be considered contemporaneous evidence from the statutory period. The record does contain some documents that are dated outside the statutory period. The record also contains various statements and affidavits related to the applicant's claim that he resided in the United States during the statutory period.

The director issued a NOID in which he indicated that he intended to deny the application because the applicant did not provide consistent, detailed, credible evidence to support his claim that he resided continuously in the United States throughout the statutory period. The director specified for example that the applicant provided the statement of [REDACTED] Council of Racial Equality on letterhead stationery in which [REDACTED]' name is spelled [REDACTED]. Yet, in the signature and typed signature line of the document, the name is misspelled as [REDACTED]. The director found that because of this contradiction within the document, this evidence cannot be considered credible. The director indicated that the applicant failed to provide independent,

contemporaneous evidence to support his claim of continuous residence in the United States that might overcome the inconsistencies and other deficiencies in the evidence of record.

In the NOID, the director also indicated that the applicant has an obligation to provide documentary evidence of having made an entry into the United States prior to January 1, 1982. This point in the NOID is withdrawn. There is no statutory or regulatory requirement that a LIFE legalization applicant must, in all instances, submit documentary evidence of having made an entry prior to January 1, 1982.

The applicant did not submit a rebuttal to the NOID. The director denied the application based on the reasons set forth in the NOID.

On appeal, the applicant asserted through counsel that the evidence in the record, taken as a whole, supports his claim that he resided continuously in the United States throughout the statutory period. He indicated that [REDACTED] name appears as '[REDACTED]' in the statement in the record because of a typographical error. Yet, as noted earlier, the letterhead of the statement in the record is written in Old English lettering, and the "I" of [REDACTED] in this Old English font resembles the letter "D." The typed signature line and the signature clearly give the spelling of the name [REDACTED] as [REDACTED]. Thus, the record indicates that this "D" is not a typographical error, but that an individual other than [REDACTED] [REDACTED] mistakenly believed that the name in the letterhead was [REDACTED] and purposely wrote it as such. The director held that because of this contradiction within the document itself, this evidence is not credible.

The AAO finds that the discrepancies set forth by the director cast serious doubt on all the evidence in the record, including the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988. Such inconsistencies may only be overcome through independent, objective evidence of the applicant's claim that he resided continuously in the United States during the statutory period.

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 (BIA 1988).

This office finds that the various statements and affidavits in the record which were submitted to substantiate the applicant's claim of continuous residence in the United States during the statutory period are not objective, independent evidence such that they might overcome the deficiencies in the record relating to the applicant's claim that he maintained continuous residence in the United States from a date prior to January 1, 1982 and throughout the statutory period, and that these documents are not probative in this matter. Moreover, further contradictions in this evidence such as the statement of the hotel manager indicating that from January 1981 through January 1983 the applicant resided at [REDACTED] New York City and the statement of Mr. [REDACTED] indicating that the applicant was his roommate from January 1981 through June 1983

at [REDACTED], New York City cast even more doubt on all the evidence in the record. The applicant also failed to provide contemporaneous, independent evidence of having resided in the United States throughout the statutory period.

The applicant has failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988. Thus, he is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act. The appeal is dismissed on this basis.

An application that fails to comply with the technical requirements of the law may be denied on those grounds by the AAO even if the Service Center or District Office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

Beyond the decision of the director, the AAO finds that the applicant is not eligible for permanent resident status under the late legalization provisions of the LIFE Act because the record indicates that he is inadmissible under section 212(a)(6)(C)(i) of the Act.

The regulation at 8 C.F.R. § 245a.2(b) provides in pertinent part:

(b) Eligibility. The following categories of aliens, who are otherwise eligible to apply for legalization, may file for adjustment to temporary residence status:

. . .

(9) An alien who would be otherwise eligible for legalization and who was present in the United States in an unlawful status prior to January 1, 1982, and reentered the United States as a nonimmigrant, such entry being documented on Service Form I-94, Arrival-Departure Record, in order to return to an unrelinquished unlawful residence.

(10) An alien described in paragraph (b)(9) of this section must receive a waiver of the excludable charge 212(a)(19) as an alien who entered the United States by fraud.

The ground of excludability at section 212(a)(19) of the Act has been replaced by the ground of inadmissibility listed at section 212(a)(6)(C)(i) of the Act, as amended.

On August 6, 1983, the applicant presented himself as a lawful nonimmigrant B-2 visitor for pleasure upon admission at New York City. Yet, according to the claims which the applicant made in this proceeding, his intent upon returning in 1983 was to continue residing unlawfully in the United States. Thus, in August 1983, the applicant procured entry into the United States by willfully misrepresenting a material fact. As such, he is inadmissible under section 212(a)(6)(C)(i) of the Act.

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 is admissible to the United States. *See* 8 C.F.R. § 245a.12(e). The applicant might only overcome this particular ground of inadmissibility if he applies for and secures a waiver for the ground of inadmissibility at issue in the matter. *See* 8 C.F.R. § 245a.18(c). The applicant submitted the Form I-690, Application for Waiver of Grounds of Excludability, which is the form an applicant must file to request a waiver of the ground of inadmissibility set forth at section 212(a)(6)(C)(i) of the Act. However, the director has not yet adjudicated this request, and as such the applicant currently remains inadmissible under section 212(a)(6)(C)(i) of the Act.

The applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act for the reasons stated above with each considered as an independent and alternative basis for denial.

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