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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:

[REDACTED]

Office: NEW YORK

Date: **APR 21 2009**

[REDACTED] - consolidated herein]

MSC 02 246 60026

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. 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.

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, New York, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish that he had continuously resided in the United States in an unlawful status since before January 1, 1982, through May 4, 1988.

On appeal counsel submits a statement and additional documentation.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – 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. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

“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.)

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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information. Documentation that does not cover the required period is not relevant to a determination of the alien's presence during the required period and will not be considered or accorded any evidentiary weight in these proceedings.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(v), states that attestations from churches, unions, or other organizations 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 issue in this proceeding is whether the applicant has demonstrated that he **continuously** resided in the United States **in an unlawful status** from before January 1, 1982, through May 4, 1988.

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 record contains a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), signed by the applicant on June 14, 1989. The applicant claimed to have entered the United States without inspection along the

U.S./Canadian border on June 13, 1981, and to have departed the United States on only one occasion – from May 10, 1987 to June 15, 1987, in order to travel to Liberia due to his father's illness – again reentering the United States without inspection along the U.S./Canadian border. On the Form I-687, the applicant indicated that he had a spouse ([REDACTED]) and three children ([REDACTED] born on February 16, 1981; [REDACTED] born on February 16, 1981; and [REDACTED] born on June 21, 1979) - all born and living in Monrovia, Liberia at the time - and that he had been employed by [REDACTED] as a mechanic since December 9, 1981. He further indicated that he had no affiliations with clubs, organizations, churches, unions, businesses, etc.

The record also reflects that in or about March 1997, a Form I-130, Petition for Alien Relative, was filed on the applicant's behalf by [REDACTED] a citizen of the United States, and that the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust status, as the spouse of a United States citizen. On a Form G-325, Biographic Information sheet, submitted in connection with those applications, the applicant indicated that he was married in New Jersey on June 9, 1996; had no prior marriages; and had lived at [REDACTED], Liberia, from birth through 1987.

The applicant filed the current Form I-485 under the LIFE Act on June 3, 2002. On this application, the applicant indicated that he was married to [REDACTED] and had four children [REDACTED], born in Liberia on February 11, 1982; [REDACTED], born in the United States on September 9, 1987; [REDACTED], born on August 27, 1995 in Canada; and [REDACTED], born on January 21, 1999 in the United States). On a Form G-325 submitted in connection with the application, the applicant indicated he had only one prior marriage – to [REDACTED] (that was dissolved in New Jersey on March 10, 1999) and had married [REDACTED] on June 26, 1999.

On July 10, 2007, the director sent the applicant a Notice of Intent to Deny (NOID) the application stating that the evidence submitted by the applicant was insufficiently probative of continuous unlawful residence in the United States from prior to January 1, 1982, through May 4, 1988. The director specifically noted that affidavits from acquaintances and relatives submitted by the applicant attesting to his residence in the United States since 1981 did not appear credible or verifiable. The director also noted inconsistencies in documentation and testimony provided by the applicant regarding his absence(s) from the United States; the birth of his child [REDACTED]; and that the record revealed that the applicant had entered the United States lawfully as a nonimmigrant (A-2) for duration of status on June 15, 1986.

In response to the NOID, counsel submitted documentation including additional affidavits; a birth certificate for the applicant's daughter [REDACTED], showing her name was changed to [REDACTED]; and letters sent to the applicant since 1981 to accompany previously provided photocopies of envelopes addressed to the applicant in the United States, postmarked 1981 and later. Counsel stated that the applicant had resided in the United States from 1981 until a trip to Africa in 1985 until his return to the United States in 1986.

The director denied the application on September 12, 2007 because the applicant had failed to establish his continuous unlawful presence in the United States throughout the requisite time period.

The director specifically noted that the letters were not verifiable and provided no proof of the applicant's residence in the United States; the affidavits provided no proof of the affiants' direct and personal knowledge of the applicant's presence in the United States; and that the applicant had failed to explain discrepancies regarding his absence(s) from the United States and his entry as a nonimmigrant in June 1986 (with a passport issued in Liberia in March 1986)

The applicant filed an appeal from the director's decision on October 12, 2007. On appeal, counsel provides photocopies of identification documentation relating to some of the affiants and additional affidavits and letters. It is noted that in a letter dated August 25, 2007, [REDACTED], [REDACTED], Brooklyn, New York, states that he had known the applicant since his arrival in the United States in 1981 when they were members of the Christ Pentecostal Church in Brooklyn; however, the applicant indicated on his Form I-687 that he had no affiliations with clubs, organizations, churches, unions, businesses, etc.

On appeal counsel asserts, in part, that due to conditions in Liberia, the applicant does not currently know where many of the affiants who previously provided affidavits are; the applicant provided his daughter's birth certificate to establish that he was present in the United States in December 1986 for the conception of his child [REDACTED]; and that the applicant left the United States on May 10, 1985, and reentered on June 15, 1986. Counsel concludes that the accumulation of evidence provided by the applicant shows by a preponderance of the evidence that he resided in the United States throughout the requisite time period. Again, counsel failed to address the applicant's having been lawfully admitted as a nonimmigrant in June 1986.

Counsel asserts that the applicant departed the United States in May 1985. The record contains a copy of the applicant's passport, indicating it was issued to him in June 1986 in Monrovia, Liberia. Service records indicate that the applicant entered the United States as a nonimmigrant on June 15, 1986. Not only does this contradict the applicant's assertions on his Form I-687 (whereon he stated that he had been absent from the United States on only one occasion from May 10, 1987 to June 15, 1987), such an absence of more than 13 months interrupts the applicant's alleged **continuous** unlawful residence. Counsel has also failed to address the fact that the entered the United States **lawfully as a nonimmigrant** during the requisite time period.

The record clearly shows that the applicant has submitted documentation containing numerous discrepancies. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

The discrepancies and errors catalogued above lead the AAO to conclude that evidence of the applicant's eligibility is not credible. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the lack of credible supporting documentation

and the inconsistencies noted in the record, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.