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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK

Date: APR 21 2009

MSC 02 212 60561 [I-485]
[MSC 08 011 17110 - Appeal]

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. 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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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, New York. 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 he entered the United States before January 1, 1982, and resided continuously in an unlawful status since then through May 4, 1988.

On appeal, counsel for the applicant submits a brief statement.

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.

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.

The applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, on April 30, 2002. The director denied the application on September 12, 2007, on the basis that the applicant failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988. The director specifically noted that the record revealed that the applicant had been issued numerous nonimmigrant visas abroad after January 1, 1982, and had been admitted to the United States in lawful non-immigrant status on July 17, 1983 – contrary to information provided on a previously filed Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act). The applicant, through counsel, timely filed the current appeal from the director's decision on October 10, 2007.

On appeal, counsel asserts that due to entry without inspection, an applicant's physical presence can not be reasonably ascertained on a cursory review of a passport; the applicant entered the United States as a minor and cannot be expected to meticulously accumulate documentary evidence relating to his entry; and, an infant cannot be capable of providing information as to the manner or circumstances of his entry. Counsel's assertions are not persuasive.

The record clearly reflects that at the time of filing his Form I-687 on September 13, 1990, the applicant indicated that he had initially entered the United States without inspection on November 14, 1981, and had departed the United States on only two occasions: (1) to Nigeria from May 26, 1983 to July 20, 1983; and, (2) to Canada from July 22, 1983, to August 8, 1983. However, information contained in the applicant's passport reveals that the passport was issued to the applicant in the Philippines on January 22, 1982, and that, while in the Philippines, he obtained a Nigerian visa on February 1, 1982, and an Italian visa on February 3, 1982. The passport further reveals that on August 30, 1982, the applicant was issued a United States non-immigrant visitor visa (B-2) in Nigeria on August 30, 1982, which he used for admission into the United States on July 17, 1983.

While counsel asserts on appeal that the applicant entered without inspection and "physical presence could not be reasonably ascertained based on a cursory examination of a person's passport," this argument does not relate to the director's decision. The director did not discuss a "deficiency" in the passport; rather, the director detailed the numerous substantive contradictions between the applicant's passport and his claims in connection with his Forms I-687 and I-485.

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 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).

Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 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 since such date through May 4, 1988, as required for eligibility for adjustment of status to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.

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