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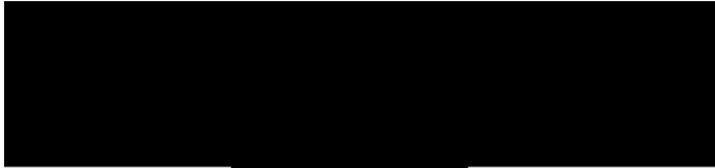
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED] Office: NEW YORK CITY Date: FEB 04 2009
MSC 01 292 60437

IN RE: Applicant: [REDACTED]

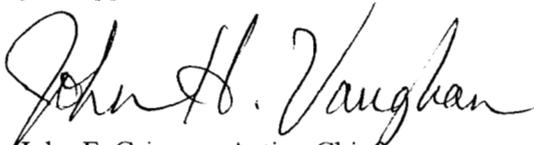
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



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 
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 in New York City. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application on the grounds that the applicant 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.

On appeal, counsel asserts that the director did not properly evaluate the evidence submitted by the applicant. In counsel's view, the documentation in the record is sufficient to establish that the applicant meets the continuous residence requirement for LIFE legalization.

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 Nigeria who claims to have lived in the United States since March 1980, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on July 19, 2001.

In a Notice of Intent to Deny (NOID), dated August 17, 2007, the director indicated that the applicant had not submitted sufficient credible evidence to establish that he entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988. The director specifically noted that some of the documentation submitted by the applicant – including a copy of a merchandise receipt dated in 1981 and a copy of a GED (high school equivalency diploma) certificate dated in 1982 – appeared to be fraudulent. The applicant was granted 30 days to submit additional evidence.

In response to the NOID counsel asserted that the applicant had submitted sufficient credible evidence to establish his eligibility for legalization under the LIFE Act. On September 29, 2007, the director issued a Notice of Decision, denying the application on the ground that the information submitted in response to the NOID was insufficient to overcome the grounds for denial.

On appeal, counsel asserts that the director did not properly evaluate the evidence submitted by the applicant. Counsel reiterates his assertion that the documentation in the record is sufficient to establish that the applicant meets the continuous residence requirement for LIFE legalization.

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 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. The AAO determines that he has not.

The documentation submitted by the applicant in support of his claim that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through May 4, 1988, consists of the following:

- A letter from [REDACTED], pastor of United Methodist Center in Far Rockaway, New York, dated October 17, 1991, stating that the applicant had been an active member of the church from December 1981 to the present.
- A merchandise receipt from [REDACTED] in Brooklyn, New York, dated June 27, 1981, with handwritten notation of the applicant's name.
- Photocopies of letter envelopes addressed to the applicant with mostly questionable or illegible postmarks.
Affidavits from individuals – dated in 1991, 1992 and 2007 – who claim to have known the applicant since the 1980s.
A photocopy of a high school equivalent diploma (GED) from the New York State Education Department with an issue date of August 26, 1982.

The letter from Reverend Janet Porcher, pastor of United Methodist Center in Far Rockaway, New York, dated October 17, 1991, 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 stated that the applicant had been a member of the church since December 1981, but did not state where the applicant lived at any time during the years 1981-1988, did not indicate when and how the reverend met the applicant, and did not state whether her information about the applicant was based on personal knowledge, the church's records, or hearsay. Since the letter did 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 in the record – dated in 1991, 1992 and 2007 – from individuals who claim to have known the applicant in the United States during the 1980s, have mostly minimalist or fill-in-the-blank formats with little personal input by the affiants. The affiants provide remarkably few details about the applicant's life in the United States and their interaction with him over the years. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationship with the applicant in the United States during the 1980s. In addition, three affiants – [REDACTED] and [REDACTED] – only provided information about the applicant's trip to Canada in 1987. In view of these substantive shortcomings, 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 photocopies of the letter envelopes addressed to the applicant in Brooklyn and Far Rockaway, New York, have a mixture of illegible and questionable postmarks which look like they may have been altered by hand. The original envelopes have not been submitted. Thus, the letter envelopes have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the requisite period for adjustment of status under the LIFE Act.

The photocopy of a retail receipt from Central Audio in Brooklyn New York, dated June 27, 1981, has a handwritten notation of the applicant's name, but no address. The receipt has no date stamp or other official marking to authenticate the date it was written. In addition, the year "1981" appears to have been altered. Thus, the receipt has little probative value. It is not persuasive evidence of the applicant's residence in the United States during 1981, much less in subsequent years up to 1988.

The photocopy of the high school equivalent diploma (GED) from the New York State Education Department, with an issue date of August 26, 1982, appears suspect. The format of the one-page document is odd, with a faint line in the middle and completely different font types on the top and bottom halves. The original has not been submitted into the record, thus precluding a closer inspection of the document. Accordingly, the GED has limited probative value. It is not persuasive evidence of the applicant's residence in the United States during 1982, much less in subsequent years up to 1988.

For the reasons discussed above, 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. Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The AAO also notes that the applicant has been convicted of two criminal offenses in New York State – both misdemeanors for the purposes of the LIFE Act under the regulatory definition at 8 C.F.R. § 245a.1(o). These offenses must be taken into consideration in any future proceedings before the United States Citizenship and Immigration Services (USCIS).

The appeal will be dismissed, and the application denied.

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