

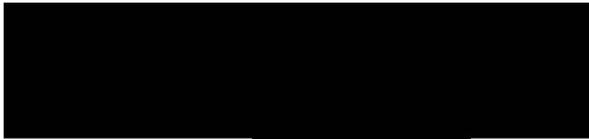
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Office: NEW YORK

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**FEB 17 2009**

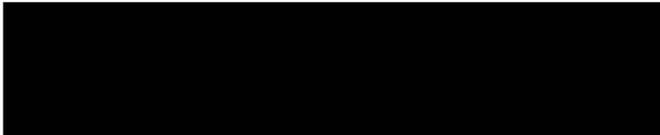
IN RE: Applicant:



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. 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 had entered the United States before January 1, 1982, and had resided continuously in the United States from then through May 4, 1988.

On appeal, counsel for the applicant submits a brief. Counsel asserts that the director's decision was "arbitrary, capricious, unreasonable, contrary to facts and the law, and clearly and unambiguously erroneous as a matter of law as well as inconsistent with the depth and weight of evidence," and requests that the director's decision to deny the application be rescinded.

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 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.

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 applicant filed a Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on December 5, 2001. On August 31, 2007, the director denied the application. The applicant filed a timely appeal from that decision on October 1, 2007.

The applicant, a native and citizen of Ghana, claims to have initially entered the United States without inspection on November 30, 1980, near Buffalo, New York, and to have departed the United States on only one occasion during the requisite time period – from August 12, 1987 to August 26, 1987 – in order to visit a cousin in Canada. No evidence of the applicant’s alleged travel to and entry into Canada on or before November 30, 1980 - prior to his claimed initial entry into the United States – is contained in the record.

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 issue in this proceeding is whether the applicant has established that he continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988. The record reflects that the applicant has submitted the following documentation in an attempt to establish his continuous unlawful residence in the United States during the requisite time period:

Employment letter: an un-notarized letter dated November 25, 1990, from [REDACTED] of the South Riverdale Service Station in Bronx, New York, stating that the applicant was employed as a gas station attendant from April 1981 to July 1989, at a weekly salary of \$250.00. The employment letter provided does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that it fails to 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.

Affidavits from acquaintances: (1) an undated letter from [REDACTED] of Bronx, New York, stating he had known the applicant since September 1984; and, (2) a similar (same type and format) affidavit notarized on August 16, 2007, from [REDACTED] of Bronx, New York, stating he had known the applicant since 1983. The affidavits lack detail as to how the affiants first met the applicant, what their relationships with the applicant were, or how frequently and under what circumstances they saw the applicant during the requisite period. Furthermore, the affiants do not attest to the applicant's presence in the United States prior to an unspecified date in 1983. As such, the statements can only be afforded minimal weight as evidence of the applicant's residence and presence in the United States throughout the requisite period.

Organization letter: a letter dated September 9, 1990, from [REDACTED] Pastor of the [REDACTED] in Bronx, New York, stating that he had known the applicant since 1981 and that the applicant was accepted in the society on March 20, 1986. The letter does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v), in that it does not establish the origin of the information being attested to (i.e., whether the information being attested to is anecdotal or comes from membership records) and merely attests to the applicant's membership in the organization since 1986. Although [REDACTED] states that he had known the applicant since 1981, prior to his membership in the organization, he provides no details as to how he first met the applicant, what their relationship was, or how frequently and under what circumstances he saw the applicant since 1981. As such, his statement also can only be afforded minimal weight as evidence of the applicant's residence and presence in the United States throughout the requisite period.

Regarding departure: (1) an affidavit notarized on November 1, 1990, from [REDACTED] of Scarborough, Canada, stating that he had known the applicant since 1978 and that the applicant visited him in Canada from August 12, 1987, to August 26, 1987 – returning to New York from whence he had arrived; and, (2) a declaration notarized on April 9, 1991, from [REDACTED] of Scarborough, Canada, stating that he drove the applicant from New York to Canada on August 12, 1987, returning to New York on August 26, 1987.

Physician's letter: a handwritten letter dated August 14, 2007, from [REDACTED] of Bronx, New York, stating that the applicant had been under his treatment since August 14, 1986.

Rent letters: (1) a letter dated July 8, 1991, from [REDACTED] of [REDACTED] Bronx, New York, stating the applicant lived with him from November 30, 1980, to December 30, 1986; and, (2) a letter dated July 30, 1991, from [REDACTED] of [REDACTED] Bronx, New York, stating the applicant lived at that address from January 1, 1987, to September 1989. The rent letters are not supported by any corroborative documentation, such as utility bills or correspondence mailed to the applicant at those addresses.

Envelope: an envelope addressed to the applicant at [REDACTED] Bronx, New York, postmarked December 19, 1981. However, the applicant did not reside at the [REDACTED] address in 1981 - as attested to by [REDACTED] above, the applicant resided at his home on [REDACTED] in 1981. Documentation contained in the record reflects that the applicant did not reside at [REDACTED] until in or after September 1989.

For the duration of the requisite time period, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no church, union or organization attestations that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(v)(A) through (G). The only medical record provided, according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv), is the physician's letter indicating the applicant's treatment in the United States from August 1986 to August 1987. The applicant also has not provided any documentation according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K), other than the envelope on which the postmark is inconsistent with the record.

It is further noted that on a Form I-687, Application for Status as a Temporary Resident, submitted by the applicant in 1981, he indicated that he had a spouse ([REDACTED], born in Ghana in 1959) and two sons [REDACTED], born in Ghana in 1980, and [REDACTED] born in Ghana in 1981) – all residing in Ghana at the time the application was submitted. On his Form I-485, the applicant listed the specific dates of his sons' births as April 13, 1980 ([REDACTED]) and May 5, 1982 ([REDACTED]). Upon request of the director, the applicant provided a birth certificate for [REDACTED] indicating that he was born in Ghana on December 17, 1982, and noting his mother's name as [REDACTED], and an affidavit from [REDACTED] in Ghana, dated May 12,

2004, stating that the applicant is [REDACTED] biological father and that he was conceived when she traveled to New York, having entered the United States without a visa or passport via Buffalo, New York, on January 15, 1982. No evidence of [REDACTED]'s travel prior to her alleged entry into the United States in January 1982, or of her departure from the United States and return to Ghana, is contained in the record. There is also no explanation in the record as to the various dates of birth regarding the applicant's son, [REDACTED]

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 (5<sup>th</sup> ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Due to inconsistencies and discrepancies noted, as well as the paucity of documentation contained in the record, the AAO concludes 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.