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FILE:



Office: WASHINGTON

Date: **FEB 27 2009**

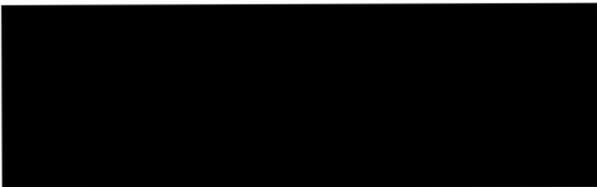
consolidated herein]
MSC 03 247 62358

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 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 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the director Washington (Fairfax, Virginia.) 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 resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal the applicant submits some additional documentation and asserts that the totality of the evidence establishes that his continuous residence in the United States began before January 1, 1982 and continued through the requisite period 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.”

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 Ghana who claims to have resided in the United States since 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on June 4, 2003.

On July 5, 2006, the director issued a Notice of Intent to Deny (NOID), indicating that the evidence of record was insufficient to establish the applicant’s continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

The applicant filed a timely response with additional documentation. On August 8, 2007, the director denied the application on the ground that the response to the NOID did not establish the applicant’s eligibility for legalization under the LIFE Act.

On appeal counsel asserts that the director erred by not properly considering all the evidence submitted by the applicant. Counsel submits copies of some documents, most of which were already in the record.

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 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.

In response to the NOID the applicant submitted copies of eleven letter envelopes addressed to him, some with illegible postmarks but others with legible or semi-legible postmarks which appear to range from 1982 to 1989. The original envelopes have not been submitted, thus precluding a closer inspection of their authenticity. All of the envelopes bear one of the following three addresses:

- [REDACTED] in Miami, Florida;
- [REDACTED] in Alexandria, Virginia;
- [REDACTED], in Brooklyn, New York.

None of those addresses, however, was identified by the applicant as a place he lived during the 1980s on a Form I-687 (application for temporary resident status) he filed (along with an "Affidavit for Determination of Class Membership in League of United Latin American Citizens v. INS (LULAC)") in Arlington, Virginia, on January 8, 1991. On that Form I-687 the applicant listed two addresses in the United States during the years 1981 to 1989, including:

- [REDACTED] in Bronx, New York – March 1981 to August 1984;
- [REDACTED], in Alexandria, Virginia – August 1984 to June 1989.

The record includes three original envelopes that were apparently submitted at the time of the Form I-687 in 1991, with postmarks that appear to date in 1985, 1986, and 1987. Each of these envelopes was addressed to the applicant at the [REDACTED] address in Arlington, Virginia, which was consistent with the address for that time period listed on the applicant's Form I-687, but contrary to any of the addresses indicated on the envelopes submitted by the applicant in the current proceeding under the LIFE Act.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). Moreover, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.*

The other documentation in the record does not resolve the inconsistencies discussed above. The only new evidence submitted during the current proceeding, of the applicant's residence in the United States during the requisite period for legalization under the LIFE Act, is a series of notarized statements/affidavits dated in March 2006. They include the following:

A notarized statement by [REDACTED] of Alexandria, Virginia, who resided in Florida during the 1980s, indicating that he met the applicant in Florida during 1981 and provided him with temporary shelter. According to [REDACTED] the applicant left for New York, returned to Florida in about six months, subsequently got a job on a farm, and left Florida for good in 1986.

- A notarized statement by [REDACTED] of Springfield, Virginia, indicating that he has known the applicant since 1984 and that they attended the same church in Brooklyn, New York.
- An affidavit by [REDACTED], of unstated address, indicating that he met the applicant at a barbecue party in 1988 and has been friends with him since then.

None of the above documents identifies any address for the applicant during the 1980s, or even confirms his state of residence during most of those years. Moreover, only one of the authors claims to have known the applicant as early as 1981. Thus, the notarized statements/affidavits submitted in 2006 have no probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

Other documentation in the record relating to the applicant's claim of residence in the United States during the requisite period for LIFE legalization dates from the 1980s and early 1990s. In support of his Form I-687, for example, the applicant submitted the following:

- A letter from [REDACTED] manager of [REDACTED] Body & Repairs in New York City, dated August 1, 1984, stating that the applicant worked there as a mechanic from April 1981 to July 1984.
- An affidavit by [REDACTED] of Alexandria, Virginia, dated October 17, 1990, stating that he had personal knowledge the applicant resided in New York City from March 1981 to August 1984 and in Alexandria from August 1984 to the present.

The employment letter from J [REDACTED] does not comport with the regulatory requirements set forth at 8 C.F.R. § 245a.2(d)(3)(i). In particular, it does not provide the applicant's address at the time of employment, does not state whether the information was taken from company records, and does not indicate whether such records are available for review. Nor has the applicant submitted any other documentation, such as earnings statements, pay stubs, or income tax records, to demonstrate that he was actually employed during the years indicated. For the reasons discussed above, the AAO determines that the employment letter has little probative value. It is not persuasive evidence of the applicant's residence in the United States during the years 1981 to 1984.

As for the affidavit by [REDACTED], it has a fill-in-the blank format with little personal input by the affiant. The affidavit provides almost no information about the applicant's life in the United States, such as where he worked. The affiant does not describe how and when he met the applicant, or the nature and extent of their interaction over the years. Nor is the affidavit accompanied by any documentary evidence— such as photographs, letters, and the like — of the

affiant's personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavit by [REDACTED] has little probative value. It is not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Also submitted by the applicant in the current proceeding are photocopies of some documents originally submitted in conjunction with an unsuccessful application for legalization as a "special agricultural worker" in 1988. The documentation includes affidavits by (1) [REDACTED] of Pompano, Florida, who claims to have employed the applicant as a laborer picking vegetables on her farm – "[REDACTED]" – in Oxahatchee, Florida, during 1985 and 1986; (2) [REDACTED] of Pompano Beach, Florida, who claims to have worked with the applicant on Parker Farms from October 1985 to April 1986; and (3) [REDACTED] of Pompano Beach, Florida, who claims that the applicant stayed with him while working on [REDACTED].

The above documentation conflicts with the information and supporting documents submitted in regard to the applicant's Form I-687, which does not mention any employment or residence in Florida during the mid-1980s. Nor do the letter envelopes submitted in the current proceeding identify any address for the applicant in Florida during the years 1985 or 1986. In view of these unresolved evidentiary conflicts, the affidavits by [REDACTED] and [REDACTED] have no probative value as evidence of the applicant's residence in the United States during the years 1985 and 1986.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he 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.

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