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U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 02 186 61406

Office: NEW YORK

Date:

**FEB 27 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. 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.

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, NY, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director concluded that the applicant was ineligible to adjust to permanent resident status under the provisions of the LIFE Act because she failed to submit credible evidence that she entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

The applicant is represented by counsel on appeal. Counsel asserts that the director failed to consider all of the evidence submitted by the applicant as required by 8 C.F.R. § 245a.12(f). No new evidence or brief is submitted in support of the appeal.

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 applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. 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.2(d)(5). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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).

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.* at 80. 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 petitioner 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 or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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 or petition.

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of her claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship written by friends, copies of a divorce decree issued in Lagos, Nigeria on August 14, 1988, copies of three birth certificates for the applicant's children, copies of the applicant's medical records, letters of employment, and a letter from a church. The record before the AAO also contains other immigration applications signed by the applicant that conflict with the information provided in the Form I-485 currently submitted under the LIFE Act. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision. After reviewing all of the evidence in the file, the AAO agrees with the director's determination that the applicant has not met her burden of proof to establish eligibility for adjustment of status pursuant to the terms of the LIFE Act.

The affidavits from [REDACTED], and [REDACTED] all contain statements that the affiants have known the applicant for years and that they attest to the applicant being physically present in the United States during the required period. These affidavits fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with her, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship; have knowledge of the facts alleged. Upon review, the AAO finds that, individually

and in the aggregate, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The affidavit from [REDACTED] states that he was the applicant's landlord in 1995. First, the AAO notes that evidence of the applicant's residence in 1995 is not relevant to establish that she entered the United States unlawfully before January 1, 1982 and resided in a continuous unlawful status through May 4, 1988. Second, this affidavit is generally not credible because there is no independent, verifiable evidence, such as rent receipts, copies of a lease agreement, or utility bills to confirm the affiant's claim that he was the applicant's landlord. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Furthermore,

The applicant also submitted a letter from the [REDACTED], Senior Pastor of the Faith Life Ministries International, located at [REDACTED], Bronx, NY. The letter is dated February 26, 2004 and appears to be on church stationery. The letter states that the applicant has been a member of the church since 1982.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. The letter from [REDACTED] does not meet the requirements listed above and will be accorded limited probative weight.

The birth certificates for the applicant's children indicate they were born in the United States in 1989, 1999, and 2001. As these dates are outside of the relevant statutory period, they are not probative of the applicant's entry into the United States prior to January 1, 1982. The employment letters are also not relevant to the requisite period of residence because they demonstrate employment commencing in 1994. Accordingly, these documents are also accorded limited probative weight.

The record before the AAO also contains an application for temporary residence (Form I-687) signed by the applicant on August 2, 1991. The applicant stated on the Form I-687 that her only departure from the United States during the relevant residency period was from July 2, 1987 to July 21, 1987 when she traveled to Canada to visit a friend. However, a copy of the applicant's passport reveals that she was issued a B-2 visitor's visa at the United States Embassy in Lagos, Nigeria in August, 1987. The conflict regarding the number of departures from the United States revealed on these two applications remains unresolved on appeal, and serves to undermine the general credibility of the applicant's evidence submitted in support of her application for adjustment of status.

Ultimately, the record also contains a federal criminal indictment issued by the United States District Court for the District of New Jersey. (Docket No. [REDACTED]) The indictment reveals that on July 10, 1992, the applicant and six other defendants were charged with one count of violating 21 U.S.C. § 846 – *Conspiracy to Possess with Intent to Distribute Heroin*, and two counts of violating 21 U.S.C. § 841(a)(1) – *Possession with Intent to Distribute Heroin*. The applicant pleaded guilty to both counts and was sentenced on April 5, 1993 to five years in prison and five years of supervised probation. Subsequent to the conviction, it appears from the record that the applicant filed a petition for review before the Third Circuit Court of Appeals. In a decision dated November 10, 1993, the Third Circuit reversed the judgment entered by the United States District Court for the District of New Jersey.

The record does not reveal grounds for reversal of the applicant's criminal conviction and we consider the original 1993 conviction to be valid for immigration purposes. *See Matter of Roldan*, 22 I. & N. Dec. 512 (BIA 1999). An alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is ineligible for adjustment to Lawful Permanent Resident status. 8 C.F.R. § 245a.18(a)(1). "Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

Section 101(a)(48)(A) of the Immigration and Naturalization Act (Act), 8 U.S.C. § 1101(a)(48)(A).

In this case, the applicant was convicted of a felony offense involving the trafficking of heroin. The applicant's felony conviction for trafficking in a controlled substance makes her ineligible for adjustment of status. Trafficking in controlled substances is considered a serious criminal offense, with substantial and unwaivable immigration consequences for applicants seeking to become a permanent resident of the United States. *See* 8 U.S.C. § 1182 (a)(2)(A)(C); 8 C.F.R. § 245a.18(a)(1) and (2).

In general, a criminal conviction remains valid for immigration purposes regardless of post-conviction relief unless the conviction was reversed because of a procedural or constitutional defect in the underlying trial court proceedings. The burden remains with the applicant to establish that her felony drug trafficking conviction was reversed by the Circuit Court because of an underlying procedural or substantive error in the trial court proceedings. The applicant has not met this burden because she has not offered any documentary evidence to suggest that her conviction was reversed because of an underlying procedural defect in the merits of the case.

Because of her felony conviction, the applicant is ineligible for adjust to permanent resident status under the LIFE Act pursuant to 8 C.F.R. § 245a.18(a)(1). Within the provisions of the LIFE Act, there is no waiver available to an alien convicted of a felony or three or more misdemeanors committed in the United States.

An alien applying for adjustment of status under the provisions of section 1140 of the LIFE Act has the burden of proving by a preponderance of evidence that he or she has continuously resided in an unlawful status in the United States from January 1, 1982 to May 4, 1988, is admissible to the United States under the provisions of section 212(a) of the INA, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.11. The applicant has failed to meet this burden.

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