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FILE: [REDACTED]  
MSC 02 179 60267

Office: GARDEN CITY

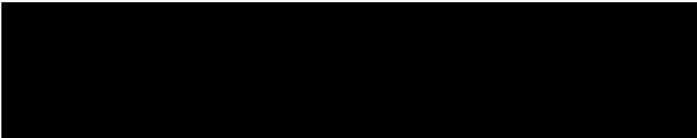
Date: JUN 02 2009

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 in Garden City, 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 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 support of his application. In counsel's view the documentation of record is sufficient to establish that the applicant meets the continuous residence requirement for legalization under the LIFE Act.

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 Ghana who claims to have lived in the United States since July 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on March 28, 2002.

In a Notice of Intent to Deny (NOID) dated September 5, 2007, the director indicated that the applicant had not submitted sufficient credible evidence to establish his continuous residence in the United States during the requisite period for legalization under the LIFE Act. The director noted that the affidavits in the record are substantively deficient. The applicant was granted 30 days to submit additional evidence.

The applicant timely responded and submitted additional documentation. On May 5, 2008, the director issued a Notice of Decision denying the application on the ground that the information and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial.

On appeal counsel asserts that the director did not properly evaluate the affidavits submitted by the applicant in support of his application. In counsel’s view the documentation of record is

sufficient to establish that the applicant meets the continuous residence requirement for legalization under the LIFE Act. Counsel submits no additional evidence on appeal.

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 during the requisite period for LIFE legalization consists of the following:

- A letter of employment from [REDACTED] who identified himself as the owner and manager of Englewood Enterprises Inc., in Englewood, New Jersey, dated September 19, 2000, stating that the applicant was employed from October 1988 to July 1991, as a service station attendant.
- Two affidavits of residence from the same affiant, [REDACTED] stating that the applicant resided with him at [REDACTED], New York. The affidavit dated September 6, 2000, stated that the applicant resided with him from July 1981 to January 1993. The affidavit dated August 9, 1981, and sworn to on August 9, 1989, stated that the applicant resided with him from July 1981 to the present (August 1981 or August 1989).
- A series of affidavits – dated in 1999, 2000, and 2007 – from individuals who claim to have known the applicant resided in the United States during the 1980s.
- Two merchandise receipts dated in 1981 and 1982, one in handwritten notation with the applicant's name and no address.
- Four envelopes addressed to the applicant at [REDACTED] New York, with partially legible postmarks that appear to have been altered by hand.

A photocopied letter from the Consulate General of Ghana in New York City, dated June 27, 1990, stating that the applicant is a citizen of Ghana, that the applicant arrived in the United States on July 22, 1981 and registered with the Consulate on September 30, 1981.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility. Here the evidence is not probative and credible.

The file contains two Forms I-687 (application for status as a temporary resident), which the applicant filed in May 1989 and March 2001. On the May 1989 Form I-687, the applicant indicated his employer in the United States as Metal Workers in Hillside, New Jersey, from August 1981 to October 1985. The applicant did not list any other employer during the statutory period. On the March 2001, Form I-687, the applicant listed these employers during the statutory period: Metal Workers Inc. in Patterson, New Jersey, from August 1981 to October 1985; and Englewood Enterprise Inc. in Englewood, New Jersey, from October 1981 to July 1991. The applicant submitted a letter from [REDACTED] of Englewood Enterprises, stating that the applicant was employed from October 1988 to July 1991. The applicant provided conflicting information about his employment in the United States during the requisite period. The employment information provided by the applicant on the March 2001 Form I-687 is contrary to the employment information provided by the applicant on the May 19, 1989, Form I-687 and contrary to the letter of employment by [REDACTED] which the applicant submitted in support of his claim.

The contradictory information provided by the applicant casts doubt on the credibility of the employment letter from [REDACTED] and on the veracity of the applicant's claim that he has continuously resided in the United States from before January 1, 1982 through May 4, 1988. The contradictory information and documentation undermine the credibility of other documents in the record attesting to the applicant's residence and employment in the United States during the requisite period. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

As noted above, the applicant has provided contradictory testimony and information in support of his application. The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence – consisting of letters and affidavits from individuals who claim to have employed, resided with or otherwise known the applicant in the United States during the 1980s, the envelopes as well as the retail receipts – is suspect and not credible.

**The employment letter from [REDACTED]**, the claimed owner and manager of Englewood Enterprise, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because the letter did not provide the applicant's address during the periods of employment, did not indicate whether the information was taken from company records, and did not indicate whether such records are available for review. The letter was not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. The director indicated in the NOID that the employment letter is substantively deficient. In response, counsel submitted a copy of a business entity status report from the State of New Jersey indicating that Englewood Enterprise, Inc. was incorporated in 1987 but the status was revoked in 1994. The report however, did not indicate that [REDACTED] is

the owner or the incorporator of the company. In addition, as previously discussed, the letter of employment from [REDACTED] is inconsistent with the employment information provided by the applicant on the March 2001 Forms I-687. Thus the letter of employment is of little probative value. It is not persuasive evidence that the applicant resided in the United States from before January 1, 1982 through May 4, 1988.

The affidavit of residence from [REDACTED], dated August 9, 1981, does not appear to be genuine. While the affidavit was purportedly signed on August 9, 1981, it was not notarized until eight years later – on August 9, 1989. As previously stated, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho., id.* Thus, the affidavit of residence is suspect and cannot serve as credible 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.

In view of the myriad contradictions in the information and documentation submitted by the applicant, the remaining documents in the record consisting of – the two retail receipts, one with handwritten notation of the applicant's name and no address, the letter from the Consulate of Ghana in New York City, and the envelopes with postmarks that appear to have been altered by hand is suspect. Thus, it must be concluded that the applicant has failed to submit sufficient credible evidence to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status during the requisite period.

Based on the foregoing analysis of the evidence, 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, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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