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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

MSC 01 310 60574

Office: NEW YORK CITY

Date:

**MAR 06 2009**

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:

[REDACTED]

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 New York City. 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 and give due weight to the documentation submitted by the applicant in support of his claim that he 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 October 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on August 6, 2001.

In a Notice of Intent to Deny (NOID), dated February 1, 2008, 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 in an unlawful status through May 4, 1988. The director indicated that some of the documents the applicant submitted in support of his application were found to be fraudulent thereby casting doubt on the credibility and reliability of other documentation in the record. The applicant was given 30 days to submit additional evidence.

The applicant timely filed a response and submitted additional documentation in support of his application. On April 28, 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 and give due weight to the documentation submitted by the applicant in support of his claim that he meets the continuous residence requirement for legalization under the LIFE Act. Counsel submits copies of affidavits previously 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 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:

An affidavit of employment from [REDACTED], sworn to on February 5, 2001, attesting that the applicant was employed at his retail store – [REDACTED] – in New York City, from September 1983 to July 1987, and that the applicant resided in New York City during the period of employment, that the applicant requested permission from him to travel to Canada in early July 1987 and that the applicant returned from Canada the end of July but could not continue his employment at his retail store.

A second affidavit of employment from [REDACTED] dated February 27, 2008, to amend his earlier affidavit of February 5, 2001. [REDACTED] stated that he is the owner of [REDACTED] in New York City, that the applicant was employed at his corporation from 1986 to 1987, that the applicant requested time off to travel to Canada in the summer of 1987, that the applicant returned to the United States in less than one week, and that although the applicant no longer worked for him, that he had kept in constant touch with the applicant ever since.

A series of affidavits – dated in 1989, 2001, 2001 and 2008 – from individuals who claim to have known the applicant resided in the United States since 1981.

- A letter from the Consulate General of Ghana in New York City, dated August 4, 1989, stating that the applicant registered with the consulate on November 24, 1981, soon after he arrived in the United States on October 5, 1981.

Two photocopied letter envelopes addressed to the applicant in the United States from individuals in Liberia, with partially legible postmark dates that appear to have been altered by hand. The applicant did not submit the originals in the file.

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

The affidavits of employment from [REDACTED] dated February 5, 2001 and February 27, 2008, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they did

not provide the applicant's address at the time of employment, did not declare whether the information was taken from company records, and did not indicate whether such records are available for review. The director, in the NOID, noted discrepancies between the date [REDACTED] was registered and the dates the applicant claimed to have begun work there.

According to record from the New York State Department of State, Division of Corporations, [REDACTED] was registered in New York on June 14, 1993. Thus, while [REDACTED] claims that the applicant was employed from September 1983 to July 1987, the company does not appear to have been registered before June 14, 1993, at the earliest. For the reasons discussed above, the AAO determines that the employment letters have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

In response to the director's NOID, the applicant submitted a second letter of employment from [REDACTED] that contradicted his earlier affidavit of February 5, 2001. In his affidavit dated February 27, 2008, [REDACTED] without providing any explanation to reconcile the discrepancy noted by the director, swore another affidavit stating that the applicant was employed by a different company of his - [REDACTED] from 1986 to 1987. [REDACTED] provided no documentation to show that he is the owner of [REDACTED] where or when the company was incorporated.

Additionally, the two affidavits of employment from [REDACTED] are contradictory to information provided by the applicant on his Form I-687 in the file dated August 4, 1989. On the Form I-687, the applicant listed his employment during the 1980s as follows:

- Self-employed tailor, from December 1981 to June 1989;
- [REDACTED], "boss boy," from July 1989 to the present (August 1989).

The applicant did not list [REDACTED] as any of his employers during the said period. The applicant has provided no documentation to reconcile or justify the discrepancies noted above. The inconsistencies noted above, and the applicant's inability to reconcile these inconsistencies, undermine the applicant's credibility and the reliability of the other documentation in the record submitted by the applicant to establish that he has resided continuously in the country during the period required for legalization under the LIFE Act. 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. *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.*

The photocopied letter envelopes addressed to the applicant at [REDACTED] [REDACTED], and [REDACTED] ( an incomplete address), with postmarks that appear to date in 1981 and 1982, have no evidentiary weight. The postmark on each of the envelope appear to have been altered by hand, and since the original is not in the file, it is impossible to determine the dates of the postmarks with any certainty. One of the envelopes bears an incomplete address, thus, there is no indication that the envelope was actually mailed to the applicant. Furthermore, the photocopied envelopes do not bear any United States Postal Service markings to show that the envelopes were processed in the United and delivered to the applicant. Thus the photocopied letter envelopes have no probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

As noted above, the applicant has provided contradictory testimony and information as well as documents that are suspect 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 mostly of a series of letters and affidavits – from individuals who claim to have known the applicant in the United States during the 1980s is suspect and non substantive. Thus, it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the period for legalization under the LIFE Act.

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.