

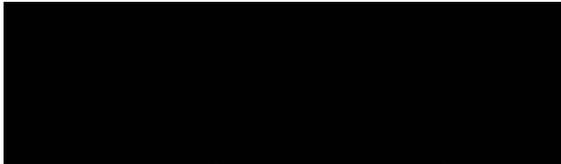
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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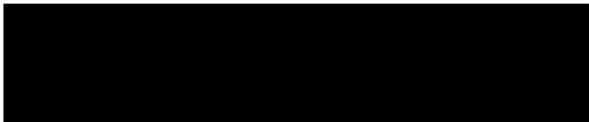
Date: 31 2009

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

The director denied the application because the applicant failed to demonstrate that he continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. Specifically, the director determined that the applicant failed to establish his presence in the United States prior to January 1, 1982.

On appeal, counsel asserts that the applicant provided evidence to establish his unlawful presence in the United States prior to January 1, 1982, and that his unlawful presence in the United States during the requisite period was known to the government. Counsel also asserts that the applicant's brief absence from the United States and reentry with a facially valid nonimmigrant visa did not break his continuous unlawful presence. The AAO has reviewed all of the evidence and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.¹

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 must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date through May 4, 1988. *See* § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant 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 section 1104 of the LIFE Act. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification.

¹ 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).

8 C.F.R. § 245a.12(e). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's 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.12(f). 8 C.F.R. § 245a.2(d)(6).

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 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 or petitioner 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).

The issue in this proceeding is whether the applicant continuously resided in an unlawful status in the United States from before January 1, 1982, through May 4, 1988. Although the evidence, particularly the applicant's social security earnings statement, reflects that the applicant resided in the United States from 1982 through 1988, the applicant has failed to demonstrate his presence prior to January 1982. On appeal, counsel asserts that the applicant entered the United States in September 1980 without inspection. In support of his claim, the record contains several attestations from individuals claiming to know the applicant in the United States prior to January 1, 1982.

The attestations from [REDACTED] and [REDACTED] all contain statements that the declarants have knowledge of the applicant's presence in the United States prior to January 1, 1982. The witness statements fail, however, to establish the applicant's residence in the United States for the time addressed. 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.

None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they have 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.

In addition, the affidavits from [REDACTED] and [REDACTED] all contain contradictions. [REDACTED] and [REDACTED] indicated that they have knowledge of the applicant's presence in the United States since September 1981; however, they also indicated that they did not meet the applicant 1982 and 1985, respectively. [REDACTED] stated that the applicant came to the United States in September 1980; however, she met the applicant in the United States in 1981. None of the affiants provide concrete information which would reflect that they have a sufficient basis for reliable knowledge about the applicant's residence prior to when they actually met the applicant in the United States.

The record includes a declaration from [REDACTED] Chancery at the Embassy of Sierra Leone in Washington, D.C. [REDACTED] stated that the applicant registered at the Embassy in September 1980; however, the declarant failed to provide the source of his knowledge or any probative value regarding the applicant's place of residence during the time addressed.

It is also noted that the record contains inconsistencies regarding the applicant's place of residence prior to January 1, 1982. The record includes the applicant's Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act (Form I-687). In his Form I-687, Question #33, the applicant stated that he resided at [REDACTED] in Silver Spring, Maryland from September 1980 to April 1984. However, the record also contains a declaration from [REDACTED] Ms. [REDACTED] indicated that the applicant resided at [REDACTED] from 1981 to 1983 and then at [REDACTED] until 1985. This declaration is inconsistent with the applicant's own testimony. In addition, the affidavit from [REDACTED] indicated that the applicant resided at [REDACTED] from September 1981 to April 1985. These inconsistencies seriously detract from the credibility of the applicant's claim. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions regarding the applicant's presence in the United States prior to January 1, 1982, are probably true. The applicant has failed to establish, by a preponderance of the evidence, that he entered the United States prior to January 1, 1982. Given this, the issues regarding whether or not the applicant's unlawful status was known to the government or whether the applicant's reentry

with a facially valid nonimmigrant visa interrupted his continuous residence need not be addressed.

Based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he maintained continuous, unlawful residence in the United States from before January 1, 1980 through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act.

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