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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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U.S. Citizenship
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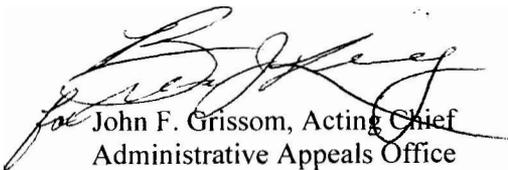
IN RE: Applicant:

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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.


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

The director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant states that he has submitted all available evidence which he asserts is sufficient to establish the requisite continuous residence. The applicant submits some of the same evidence earlier provided on 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 “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.

In the Notice of Intent to Deny (NOID), dated December 14, 2006, the director stated that the applicant failed to submit sufficient evidence demonstrating his entry into the United States prior to January 1, 1982, and his continuous unlawful residence in the United States throughout the requisite period. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated May 16, 2007, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant failed to respond to the NOID.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. The applicant submitted evidence, including letters and affidavits, as evidence to support his Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is neither probative, nor credible.

Employment Letters

The applicant submitted a letter of employment from [REDACTED], Secretary/Treasurer of Coyaga Corporation, located at 209 2nd Street, S.W., Charlottesville, VA 22901, stating that the applicant had been employed as a restaurant helper at the Charlie's Fried Chicken and Taters restaurant from October 15, 1985 to July 26, 1987.

The applicant also submitted a letter of employment, dated September 13, 1982, from [REDACTED], Manager, of International Business Consultants, located at 718 West Street, Charlottesville, VA 22901, stating that the applicant had been employed as an office assistant from June 1981 to September 1982.

It is noted that the letters failed to provide the applicant's address at the time of employment. Also, the letters failed to show periods of layoff, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i). The letters, therefore, are not probative as they do not conform to the regulatory requirements.

Affidavits & Letters

The applicant submitted the following:

1. An affidavit from [REDACTED] dated June 12, 2007, attesting that the applicant has been a resident of Charlottesville and Alexandria, Virginia, for the past 25 years. The affiant, however, does not indicate how he dates his acquaintance with the applicant, the basis of his knowledge of the applicant's residence in Virginia, and how frequently and under what circumstances he had contact with the applicant during that time.
2. Affidavits from [REDACTED] and [REDACTED]. Both affiants attest to having known the applicant to have resided in the United States since July 1981. The affiants also state that they became acquainted with the applicant through personal contact and telephone conversations. However, they do not provide details, such as how they date their acquaintance with the applicant; the basis of their knowledge of the applicant's residence in Virginia; and, how frequently and under what circumstances they had contact with the applicant during that time.

The record of proceedings also contains a letter from [REDACTED] of the Trinity Episcopal Church, located at 1042 Preston Avenue, Charlottesville, Virginia, stating that the applicant has been a member of the congregation since his arrival in Charlottesville in February 1980. The letter, however, is dated December 12, 1980, and therefore it does not establish the applicant's residence during the requisite period.

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 the Trinity Episcopal Church does not comply with the above cited regulations because it does not: state the address where the applicant resided during attendance ... (membership) ... period; establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period; establish the origin of the information being attested to; and, that attendance (membership) records were referenced or otherwise specifically state the origin of the information being attested to. For this reason, also, the letter is not deemed probative and is of little evidentiary value.

In addition, the applicant submitted two paystubs, dated July 20, 1986 and August 24, 1986, respectively, issued in the name of [REDACTED];" and, three mail envelopes addressed to the applicant in Charlottesville, Virginia. The paystubs are not probative as they are not issued in the applicant's name. The applicant asserts that he worked under the name of [REDACTED], but, he does not submit any evidence to support his assertion. Contrary to his assertion, the applicant indicated on his Form I-687 that he had two employers during the requisite period, and he submitted employment letters from both of these employers. However, there is no indication from the letters of employment provided that the applicant had been employed under the name [REDACTED]. Also,

none of the mail envelopes bear U.S. postmarks, and they do not individually, or collectively, establish the applicant's continuous residence.

As discussed above, the evidence submitted is lacking in detail. As such, the evidence does not establish the requisite continuous residence during the requisite period.

Furthermore, contrary to his assertion, the applicant has submitted questionable documentation. In an attempt to establish his continuous residence throughout the requisite period, the applicant submitted affidavits and letters that are questionable. The applicant claims that he has resided in the United States since February 1980, and that since his arrival he has departed once, to Mexico, on October 7, 1987, and he returned to the United States on October 21, 1987. However, the applicant indicated on his Form I-687 application, signed on November 24, 1990, that he had three children born in Kumasi, Ghana, on January 28, 1983, June 21, 1986, and July 28, 1989, respectively. The applicant has failed to provide evidence as to how he fathered three children who were born in Ghana while he purportedly was residing in the United States.

The above discrepancies cast considerable doubt on whether the applicant resided in the United States from February 1980 as he claims. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). 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 offered by the applicant is suspect.

Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is 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.