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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office: GARDEN CITY
[REDACTED] consolidated herein]

Date: **MAY 06 2009**

MSC 02 018 61180

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:

SELF-REPRESENTED

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

The director denied the application on the ground that the applicant failed to establish that she entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status from before January 1982 through May 4, 1988.

On appeal the applicant asserts that she did not receive the Notice of Intent to Deny (NOID) and requested the director to reserve decision, resend the NOID and grant her the opportunity to respond. The applicant did not submit any documentation with the appeal.

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 Haiti who claims to have lived in the United States since April 28, 1981, filed her application for legal permanent resident status under the LIFE Act (Form I-485) on October 18, 2001.

The record reflects that the director issued two NOID. The first NOID was issued on April 16, 2007. In that NOID, the director indicated that the applicant had not submitted sufficient credible evidence to establish that she entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988. The director cited inconsistencies in the record that call into question the veracity of the applicant’s claimed entry on April 28, 1981. The applicant was granted 30 days to submit additional evidence. The applicant responded with explanations for some of the discrepancies cited in the NOID. The applicant’s response was in the form of an appeal which was received by the director on April 30, 2007. The director denied the appeal as no decision had yet been made on the applicant’s application. On August 15, 2007, the director issued a second NOID to the applicant, essentially notifying the applicant that the information in the record is insufficient to establish her claim. The director also repeated the inconsistencies found in the record and granted the applicant 30 days to respond and submit additional evidence.

The applicant did not respond to the NOID dated August 15, 2007. On September 24, 2007, the director issued a Notice of Decision denying the application based on the reasons stated in the NOID.

The applicant filed a timely appeal, asserting that she did not receive the NOID. The applicant requested that the director reserve decision on her application, resend the NOID and grant her time to respond.¹ The applicant did not submit any new documentation with the 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 she 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 she has not.

The documentation submitted by the applicant in support of her claim that she entered the United States before January 1, 1982, and resided continuously in the country during the requisite period for LIFE legalization, consists of the following:

- A letter of employment from [REDACTED] manager at Penn Plaza Hotel Corporation in New York City, dated August 17, 1990, stating that the applicant was employed as a cleaner from August 1981 to November 1989, and was paid \$4.50 per hour.

¹ The record reflects that on August 15, 2007, the director mailed the NOID, via certified mail return receipt requested, to the applicant at her address of record. However, the NOID was returned with the notation "attempted-not known". The record also reflects that subsequently, the director mailed the Notice of Decision (NOD), dated September 24, 2007, to the applicant at the same address which was not returned. The record does not reflect that the applicant filed a change of address notice. In fact, the applicant used the same address on the current Form I-290B (Notice of Appeal). The applicant indicated on the form that she still resides at the same address. The applicant did not provide any explanation as to how she could have received all correspondences mailed to her at that address except for the August 15, 2007, NOID. Notwithstanding, the applicant had responded to the NOID dated April 16, 2007, which content is the same as the August 15, 2007 NOID. Therefore, the record must be considered complete.

- A letter from [REDACTED], pastor at Good Sheppard Baptist Church of Peniel in Brooklyn, New York, dated March 12, 1991, stating that the applicant had been a member of the church since September 1981 until the present (1991). A series of affidavits dated in 1990 from individuals who claim to have resided with, or otherwise known the applicant in the United States during the 1980s. A photocopied Form 1040 U.S. Individual Income Tax Return for the year 1981, and a photocopied W-2 Wage and Tax Statement 1981, from Penn Plaza Hotel Corporation. Numerous envelopes with United States postage stamps addressed to the applicant at the addresses she claims in the United States with postmarks dated from 1981 to 1988.

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

The letter of employment from Penn Plaza Hotel Corporation does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because the letter did not indicate the applicant's residence during the period 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 applicant submitted a photocopied W-2 Wage and Tax Statement from Penn Plaza Hotel Corporation for the year 1981 and nothing for the remainder of the years the applicant claimed to have worked there. The W-2 form is suspect because the applicant submitted a photocopied Form 1040 U.S. Individual Income Tax Return for the year 1981, which allegedly was completed based on the W-2 from Penn Plaza. However, the applicant completed the Form 1040 as an independent contractor and did not reflect the name of her employer as required. In addition, the applicant did not submit a certified tax record from the Internal Revenue Service or a copy of Social Security Earnings Statement to establish that she actually earned the income and filed the tax return as claimed. Even if the AAO accepted the earnings statement for 1981 and the Income Tax Return for 1981, as true, the documents are not sufficient to establish that the applicant resided continuously in the United States through the requisite period to May 4, 1988. For the reasons discussed above, the AAO determines that the employment documents have limited probative value. They are not persuasive evidence that the applicant resided in the United States from before January 1, 1982 through May 4, 1988 as required for legalization under the LIFE Act.

The letter from [REDACTED] of Good Sheppard Baptist Church of Peniel in Brooklyn, New York does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. While the letter stated that the applicant had been a

parishioner since September 1981, it did not state where the applicant lived at any point in time during the years 1981-1988, did not indicate how and when [REDACTED] met the applicant, and did not provide any details as to whether his knowledge was acquired by personal interaction with the applicant since 1981, church records, or hearsay. Since the letter does not comply with sub-parts (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that it has little probative value. The letter is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

As for the other affidavits in the record – dated in 1990– from acquaintances who claim to have resided with, rented a room to, or otherwise known the applicant during the 1980s, all have minimalist or fill-in-the-blank formats with little personal input by the affiants. Considering the length of time they claim to have known the applicant – in most cases since 1981 – the affiants provide remarkably little information about her life in the United States and their interaction with her over the years. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationships with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the letters and affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

The applicant submitted an envelope for each year starting from December 1981 to January 1988, as evidence of her continuous residence in the United States from before January 1, 1982 through May 4, 1988. The envelopes appear not to be genuine. The envelopes dated from 1981 to 1984, were addressed to the applicant at [REDACTED] and the envelopes dated from 1985 to 1988, were addressed to the applicant at [REDACTED] Brooklyn, New York. The applicant however, listed different addresses on the Form I-687 dated March 19, 1991, as her residential addresses in the United States during the periods 1981 to 1989. For example, on the form, the applicant listed [REDACTED], as her residential address from April 1984 to June 1989, which is contrary to the address on the envelopes. The contradiction calls into question the credibility of the envelopes. Doubt cast on any aspect of the applicant's evidence also reflects on the reliability and reevaluation of other evidence in the record. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Thus, the envelopes have no probative value as credible evidence of the applicant's residence in the United States during any of the years much less through the statutory period required 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 she 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. 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.