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U.S. Citizenship
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Services

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[redacted]

FILE: [redacted] Office: HARTFORD Date: MAY 0 6 2009
MSC 02 201 61513

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 Hartford, Connecticut. 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, resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United from November 6, 1986 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 and continuous physical presence requirements 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 August 21, 1980, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on April 19, 2002.

In a Notice of Intent to Deny (NOID), dated August 24, 2006, the director indicated that the applicant had not submitted sufficient credible evidence to establish that he entered the United States before January 1, 1982, resided continuously in the country in an unlawful status through May 4, 1988, and was continuously physically present in the country from November 6, 1986 to May 4, 1988. The director indicated that documentation submitted by the applicant in support of his claim were substantively deficient. The applicant was given 30 days to submit additional evidence.

The applicant timely filed a response and submitted additional documentation. On September 29, 2006, the director issued a 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 no additional 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 documentation submitted by the applicant in support of his claim that he entered the United States before January 1, 1982, resided continuously in the country in an unlawful status through May 4, 1988, and was continuously physically present in the country from November 6, 1986 through May 4, 1988, consists of the following:

- A letter of employment from [redacted] manager at Amandos Coffee & Grocery Shop in Brooklyn New York, stating that the applicant was employed from November 1981 to May 1987, as a server.
  A letter of employment from [redacted], manager at Mayo Electrical Construction and Supply, in Bronx, New York, stating that the applicant was employed from June 1987 as "electrical helper" and was paid $9.50 per hour.
- A series of letters and affidavits – dated in 1990, 1991 and 1992 – from individuals who claim to have resided with or otherwise known the applicant in the United States during the 1980s.
- A copy of residential lease between [redacted] as the landlord and [redacted] and the applicant as tenants at [redacted] New York, for a two year term beginning January 15, 1984 and ending January 15, 1986.
  Two copies of family car insurance policies from American Family Mutual Insurance Company in Madison, Wisconsin, for the periods from November 29, 1983 to May 29, 1984; and from June 5, 1986 to November 29, 1986.
  Various merchandise and retail receipts dated in 1983, 1986, and 1987, with handwritten notations of the applicant's name; some did not bear the applicant's address.

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

The applicant has submitted contradictory information in support of his application that calls into question the veracity of his claim that he entered the United States before January 1, 1982, resided continuously in the country through May 4, 1988, and was continuously physically present in the country from November 6, 1986 through May 4, 1988. For example, on the Form

I-687 (application for status as a temporary resident) dated September 10, 1990, the applicant listed his address in the United States during the 1980s as Brooklyn, New York, from August 1980 to the present (September 1990). The applicant however, submitted various other documentation addressed to him at various other addresses in the United States. As an example, the applicant submitted copies of car insurance policy for the years 1983, 1984, and 1986, addressed to the applicant at , Minneapolis, Minnesota. In the file is a copy of a merchandise receipt from Sears Tire & Auto Center, dated September 24, 1983, addressed to the applicant at Minneapolis. Also in the file is a photocopy of Minnesota Vehicle Registration Cab Company with the applicant's name and address listed a , Minneapolis, Minnesota, with a due date of November 1983. The applicant did not claim the addresses in Minnesota as any of his addresses in the United States in the 1980s. Thus, the documentation addressed to the applicant in Minnesota which he submitted as evidence of his continuous residence and continuous physical presence in the United States during the statutory period is suspect and not credible.

The applicant submitted an affidavit from , dated January 22, 1990, stating that the applicant resided with him at in Brooklyn, New York, from August 21, 1980 to the present (January 1990). The applicant however, submitted a photocopy of a lease agreement for the address for 1984 through 1986, and listed as the co-tenant. The contradictory information about the applicant's residence during the 1980s casts grave doubt on the credibility and reliability of the lease agreement, the affidavit from , as well as other documentation in the record, and calls into question the veracity of the applicant's claimed continuous residence and continuous physical presence in the United States during the periods required for legalization under the LIFE Act.

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 employed, resided with or otherwise known the applicant in the United States during the 1980s is suspect and non substantive. The letters of employment are not dated, therefore, it cannot be determined when they were written. Furthermore, the letters of employment are not supplemented by any earnings statements, W-2 forms or tax records to establish that the applicant was employed during the periods indicated. Thus, it must be concluded that the applicant has failed to establish that he continuously resided and was continuously physically present in the United States during the periods 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) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(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.