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

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FILE:

MSC-02-246-61693

Office: NEW YORK

Date:

NOV 24 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 on your appeal. If your appeal was dismissed or rejected, your file has been sent to the National Benefits Center. You no longer have a case pending before this office. If your appeal was sustained or the matter was remanded for further action, your file has been returned to the office that originally decided your case, and you will be contacted. You are not entitled to file a motion to reopen or reconsider your case.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the director, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application based on the determination that the applicant was ineligible to adjust to permanent resident status under the provisions of the LIFE Act because he had not met his burden of proof that he entered the United States on or before January 1, 1982, and had resided here in an unlawful status for the requisite period of time. *See* 8 C.F.R. § 245a.15(d). Specifically, the director noted that the applicant could not produce a valid birth certificate and could not verify the extent of his two departures from the United States during the qualifying period. The director concluded that the applicant was not eligible for adjustment to permanent resident status under the LIFE Act. *See* 8 C.F.R. § 245a.11(d)(1).

The applicant, who is represented by counsel on appeal, filed a timely Notice of Appeal (Form I-290B). Counsel asserts that the applicant is eligible for status as a permanent resident under the LIFE Act because he has provided sufficient evidence of continuous residence for the requisite period of time, and because he has provided true copies of his original birth certificate from Ghana. Counsel explains that the different notations between the two birth certificates, identified by the director, are the result of the recent computerization of the Ghanaian birth records.

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 or 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).

Furthermore, an alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. 8 C.F.R. § 245a.3(c)(1). “Felony” means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

“Misdemeanor” means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

The AAO has considered the applicant’s assertions, 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

The issue in this proceeding is whether the applicant has established that he (1) entered the United States on or before January 1, 1982, (2) has continuously resided here in an unlawful status for the requisite period of time, and (3) is otherwise admissible. The documents that the

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).

applicant submits in support of his claim to have arrived in the United States on or before January 1, 1982 and lived in an unlawful status during the requisite period include photocopies of a passport issued by the Republic of Ghana on August 17, 1989, a high school equivalency diploma issued by the state of New York dated "1981", and an employment letter issued on August 2, 1989, by SIA, Inc., stating that [REDACTED] has been employed "since February 1980 as a security guard."

With the exception of the high school equivalency diploma, the AAO finds these documents to be of little probative value. The passport is outside of the qualifying time period. The employment letter is not signed by a company official and does not meet regulatory requirements for the submission of letters of employment. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where the records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F).

Furthermore, the record contains a second employment letter issued by the same firm, dated October 19, 1989 and now signed by [REDACTED] who is identified as the office manager. However, this letter identifies the applicant as [REDACTED]. The conflict between these two employment documents calls into question their overall reliability. Thus, we assign neither employment document any probative weight.

Finally, the applicant submitted affidavits in support of his Form I-485 from [REDACTED] and [REDACTED]. All of the affidavits contain statements that the affiants have known the applicant for years and that they attest to the applicant being physically present in the United States for some or all of the required period. These affidavits fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. 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 were 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. Upon review, the AAO finds that, individually and together, the witness

statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The AAO notes that the evidence in the record also contains certified court documents of the applicant's criminal record. The applicant was convicted on April 8, 1982 for operating a motor vehicle without a license [REDACTED]; on May 9, 1984 for the same offense [REDACTED]; and again on January 2, 1985 for the same offense [REDACTED]. Additionally, the applicant was convicted on December 12, 1983 for driving with a suspended license ([REDACTED]). These offenses are considered misdemeanor offenses in New York. As noted above, an alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. 8 C.F.R. § 245a.11(d)(1).

The AAO concludes that the applicant has not established by a preponderance of credible, probative evidence that he has continuously resided in the United States for the requisite period of time, and his four misdemeanor convictions render him ineligible for adjustment to permanent resident status pursuant to the terms of the LIFE Act.

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

² We note that the applicant's date of birth on the certificate of disposition is listed as November 20, 1959, whereas the I-485 lists the applicant's date of birth as January 20, 1960.