

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

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

**PUBLIC COPY**



U.S. Citizenship  
and Immigration  
Services



L2

FILE:



Office: BALTIMORE

Date:

**SEP 09 2009**

MSC 02 043 62830

IN RE:

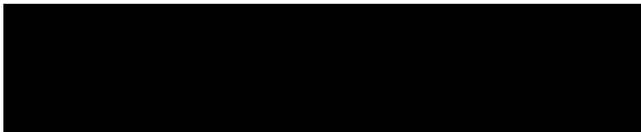
Applicant:



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

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel reiterates the applicant's claim of continuous residence in this country for the requisite period and asserts that the applicant has submitted evidence in support of such claim. Counsel contends that additional supporting documents are unavailable to the applicant as a result of the extensive passage of time.

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 and through May 4, 1988. Section 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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).

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 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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. *Id.*

Even if the director has some doubt as to the truth, if the petitioner 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, 431 (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 or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing his continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Act, on January 14, 1991. The record shows that the Form I-687 application was prepared by an individual other than the applicant. At part #2 of the Form I-687 application where applicants were asked to list their full family name, the preparer listed the applicant’s name as [REDACTED].” The preparer listed the applicant’s date of birth as June 3, 1956 at part #3 of the Form I-687 application. At part #4 of the Form I-687 application where applicants were asked to list other names used or known by, the preparer listed “NA.” The preparer listed the applicant’s place of birth as [REDACTED] Nigeria at part #13 of the Form I-687 application. At parts #22 through #30 of the Form I-687 application where applicants were asked to provide information regarding their manner of entry if the applicant had been admitted as a *nonimmigrant*, the preparer indicated that the applicant entered the United States with a B-2 visitor’s visa that had been issued on September 24, 1980, that his period authorized stay in this country expired on December 2, 1980, and that he violated his legal status as a B-2 visitor by remaining in the United States after his visa had expired. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the preparer listed the applicant’s address of residence as “[REDACTED] in Washington D.C. from September 1980 to September 1982, [REDACTED]” in Washington D.C. from October 1982 to December 1986, and [REDACTED]” in Washington D.C. from January 1987 through at least the end of the end of the requisite period on May 4, 1988. The preparer listed the applicant’s employment in the United States since first entry at part #36 of the Form I-687 application as a self-employed temporary construction worker from 1981 to July 1987, a volunteer for the American Red Cross at 2321 18<sup>th</sup> St. N.W. in Washington D.C., from 1981 through the date the Form I-687 application was submitted on January 14, 1991, and a security guard for North Capitol Pharmacy at 1418 N. Capitol St., in Washington D.C., from July 1987 to February 1989. Finally, the applicant signed the Form I-687 application at part #46 certifying under penalty of perjury that the foregoing testimony was true and correct.

Subsequently, the applicant filed his Form I-485 LIFE Act application on July 19, 2001. With the Form I-485 LIFE Act application, the applicant included a Form G-325A, Report of Biographic Information. Both of these documents appear to have been prepared by applicant’s counsel. On both the Form I-485 LIFE Act application and the Form G-325A biographic report, the

applicant's date of birth is listed as January 3, 1959. At that part of the Form G-325A biographic report where applicants were asked to list all other names used, the preparer failed to list any additional names that had been used by the applicant. Neither the applicant nor counsel offered any explanation as to why the applicant's date of birth was listed as June 3, 1956 on the Form I-687 application, but then subsequently listed as January 3, 1959 on both the Form I-485 LIFE Act application and the Form G-325A biographic report.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted original letters dated August 22, 1985, October 20, 1986, June 30, 1987, and October 14, 1987, at the address [REDACTED] in Washington D.C. However, it must be noted that the applicant's Form I-687 application listed his addresses of residence as [REDACTED] in Washington D.C. from October 1982 to December 1986, and [REDACTED] in Washington D.C. from January 1987 through at least the end of the requisite period on May 4, 1988. No explanation has been advanced as to how the applicant was still receiving mail with no evidence of forwarding at an address in June and October of 1987 from which he claimed to have moved in December 1986. In addition, the letter dated August 22, 1985 is addressed to an individual with the name "[REDACTED]" rather than the applicant's name "[REDACTED]". Although the applicant included two additional letters, these two letters are not probative to the applicant's claim of residence for the requisite period because one of the letters is dated subsequent to the end of the requisite period on May 4, 1988 and the other letter is neither dated nor contains a discernible postmark.

The applicant provided the following documentation all of which bear testimony relating to an individual with the name, [REDACTED] or a variant thereof: two photocopied Potomac Electric Power Company receipts reflecting payments by [REDACTED] for service at [REDACTED], in Washington D.C.; an original letter dated July 26, 1990 bearing the letterhead of Riggs National Bank of Washington D.C. that is signed by Banking Officer, [REDACTED], who testified that [REDACTED] maintained a savings account at this bank from June 1, 1980 to July 6, 1982 and then a checking account from February 23, 1988 through the date the letter was executed on July 26, 1990; a photocopied Statement of Savings Account from Riggs National Bank of Washington D.C. reflecting transactions from a saving account held by "[REDACTED]" in the period from December 31, 1980 to March 30, 1981; an original letter dated May 7, 1990 bearing the letterhead of the Floyd E. Davis Company and signature of Property Management Clerk, [REDACTED], who testified that "[REDACTED] rented apartment # [REDACTED] at [REDACTED] in Washington D.C. from this company from June 24, 1981 to September 17, 1982; a portion of an original British Airways ticket dated September 24, 1980 which reflected that an individual named [REDACTED]" flew from Kano, Nigeria to London, England on this date; and, an original statutory "Declaration of Age" in which [REDACTED] attested that he was the uncle of "[REDACTED]" and that he had personal knowledge that this individual had been born on June 3, 1956 but his birth was not registered at that time.

The applicant included the following documents all of which bear testimony relating to an individual with the name, [REDACTED] a photocopied Student Fees Bill dated March 9, 1985

from the University of Maryland University College in College Park, Maryland to "[REDACTED]" in the amount of \$1456.00 for the Fall 1985 semester; a photocopied Schedule Card dated March 9, 1985 for [REDACTED] reflecting a schedule of classes for the Fall 1985 semester at the University of Maryland University College; and, an original employment letter dated September 28, 1990 bearing the letterhead of the North Capitol Pharmacy in Washington D.C. and the signature of Manager-Pharmacist, [REDACTED] who testified that [REDACTED] was employed by this pharmacy as a security guard from July 1987 to February 1989.

The fact that the record contains supporting documentation in the name "[REDACTED]" or a variant thereof, and "[REDACTED]" raises questions relating to the credibility of the applicant's claim of residence in this country since prior to January 1, 1982. No information was provided by preparers acting on the applicant's behalf on either the Form I-687 application or the Form G-325A biographic report regarding the use of any other name by the applicant or other names by which he known during the requisite period.

The applicant submitted an affidavit signed by [REDACTED] who stated that the applicant stayed with him at his residence in Toronto, Canada from August 10, 1987 to August 27, 1987. Nevertheless, [REDACTED] attested only to the applicant's purported absence from this country in 1987 and failed to provide any direct testimony relating to the applicant's residence in the United States for the period in question.

The applicant provided an affidavit that is signed by [REDACTED] Mr. [REDACTED] indicated that he and applicant went to the same school and spent time together while the applicant resided at [REDACTED] in Washington D.C. from January 1987 to June 1990. The applicant included a letter dated November 22, 2002 bearing the letterhead of Riggs National Bank Embassy Banking Division in Washington D.C. and signature of the Vice President of this division, [REDACTED] who testified that the applicant established an unspecified banking relationship with the bank on February 23, 1988. Regardless, both [REDACTED] and [REDACTED] attested only to the applicant's residence in this country for a portion of the latter part of the requisite period and failed to provide any testimony regarding the applicant's residence in the United States from prior to January 1, 1982 through December 1986 in [REDACTED] case and up through February 22, 1988 in [REDACTED] case.

The applicant submitted an original letter dated September 19, 1990 bearing the letterhead of the American Red Cross District of Columbia Chapter Northwest Service Center in Washington D.C. and signature of Coordinator, [REDACTED]. Ms. [REDACTED] declared that she had known [REDACTED] since 1981 and he had done volunteer work in this office on many occasions. However, the testimony of [REDACTED] is general and vague and lacked sufficiently detailed information to be probative to the applicant's claim of residence in this country for the requisite period.

The applicant provided two Social Security Administration printouts dated July 18, 1990 and November 19, 2002, respectively. Both of these printouts list the applicant's name as [REDACTED]

██████████' and month and year of birth as June 1956 and indicate that the applicant had earnings of \$261.10 subject to withholding taxes in 1981 with no subsequent earnings through the end of the requisite period on May 4, 1988. While these printouts tend to corroborate the applicant's residence in the United States for a portion of 1981, the documents do not demonstrate the applicant's continuous residence in the country from 1982 through May 4, 1988. Additionally, the fact that the applicant was employed in 1981 does not establish that he violated status by engaging in unauthorized employment because the record does not contain any evidence demonstrating that he held a valid visa with a period of authorized stay through 1981.

The applicant included the following photocopied documentation: a Transfer Student Evaluation dated March 5, 1982 from the University of the District of Columbia in Washington D.C. reflecting the applicant's attendance at Strayer College and corresponding credits for the Fall 1980 semester through Fall 1981 semester; a savings deposit slip from Riggs National Bank dated January 25, 1982 bearing the applicant's handwritten name; a Financial Encumbrance Form dated August 18, 1982 from the University of the District of Columbia; a letter dated May 19, 1983 bearing the letterhead of the University of the District of Columbia Mount Vernon Square Campus and **the signature of** the Acting Chairman of the Department of Business and Public Management, ██████████, who indicated that the applicant intended to take three classes at George Washington University in Washington D.C.; and, a Statement of Account dated January 21, 1988 from the University of Maryland University College in College Park, Maryland reflecting charges to and payments from the applicant between July 17, 1987 to January 14, 1988. However, the probative value of these documents is limited in that such documents are photocopies rather than original documents. "In judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation." 8 C.F.R. § 245a.2(d)(6).

The record shows that the applicant was interviewed regarding his Form I-485 LIFE Act application at the United States Citizenship and Immigration Services or USCIS (formerly the Immigration and Naturalization Service or the Service) office in Baltimore, Maryland on December 3, 2002. The notes of the interviewing officer reveal that the applicant testified that he entered the United States with an F-1 student visa in September 1980 and that he subsequently attended the University of the District of Columbia until 1985 without graduating. Although the interviewing officer's notes lack any corresponding reference, it appears the applicant also indicated that he began working at a Roy Rogers Restaurant in Washington D.C. in 1984. However, the applicant's testimony at his interview on December 3, 2002 regarding his manner of entry into this country is directly contradicted by the testimony at parts #22 through #30 of the Form I-687 application where the preparer indicated that the applicant entered the United States with a B-2 visitor's visa that had been issued on September 24, 1980, that his period authorized stay in this country expired on December 2, 1980, and that he violated his legal status as a B-2 visitor by remaining in the United States after his visa had expired. Furthermore, the information regarding the applicant's employment history at part #36 of the applicant's Form I-687 application failed to list any employment for the applicant with Roy Rogers Restaurant during the period in question.

The record shows the director issued a notice to the applicant and counsel on December 27, 2002, informing the parties of the intent to deny the applicant's Form I-485 LIFE Act application. Specifically, the director noted that applicant failed to meet his burden in establishing his continuous residence in the United States since prior to January 1, 1982 through May 4, 1988 because of the conflicts and discrepancies cited above as well as the lack of sufficient credible evidence. The parties were granted thirty days to respond to the director's notice.

In response, the applicant and counsel submitted statements in which both parties asserted that the discrepancy in birth dates attributed to the applicant in various documents contained in the record was the result of the difference in time between his actual birth date and the date such birth was subsequently registered in government records. The applicant and counsel contended that any discrepancy in names attributed to the applicant in documents contained in the record was due to the transposition of his first, middle, and last names. The applicant included a letter bearing the letterhead of Nigerian Embassy in Washington D.C. and the signature of [REDACTED] of the Consular Section who testified that the applicant was the holder of a Nigerian passport who was born on January 3, 1959, as well as photocopied birth certificate containing corresponding information relating to the applicant.

The applicant and counsel claimed that the applicant actually began working at Roy Rogers Restaurant in 1981 with counsel declaring that such employment was corroborated by the previously submitted Social Security Administration printouts and an affidavit included with the response. The applicant and counsel asserted further documentation from Roy Rogers Restaurants was unavailable because this enterprise had gone out of business. The applicant submitted an affidavit signed by [REDACTED] who declared that he had known the applicant since 1980 and that the applicant began working for Roy Rogers Restaurants in March 1981.

The director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status since prior to January 1, 1982. The director concluded that the applicant was not eligible to adjust to permanent residence under section 1104 of the LIFE Act, and, therefore, denied the Form I-485 LIFE Act application on February 23, 2003.

On appeal, counsel reiterates the applicant's claim of continuous residence in this country for the requisite period and asserts that the applicant has submitted sufficient evidence in support of such claim. Counsel includes a new document as well as a copy of a previously submitted savings deposit slip with the appeal.

Counsel contends that the discrepancy in birth dates attributed to the applicant in various documents contained in the record was the result of the difference in time between his actual birth date and the date such birth was subsequently registered in government records. Counsel

claims that the June 3, 1956 birth date listed on the applicant's Form I-687 application was incorrect and that the applicant's correct birth date was actually January 3, 1959. The AAO accepts the fact that it is not uncommon for discrepancies to arise as a result of birth registration dates causing confusion with actual birth dates. However, in such cases, it is inevitable that the incorrect date is derived from the subsequent and later date such birth is registered in government records rather than the earlier date of the actual birth. Mistakes occur when individuals assume their birth date is the subsequent date of the registration of their birth in government records only to later learn that their actual date of birth was earlier and prior to the date of registration. Consequently, counsel's claim that the subsequent and later date is the applicant's correct date of birth cannot be considered as either logical or persuasive.

Counsel asserts that any discrepancy in names attributed to the applicant in documents contained in the record was due to the transposition of his first, middle, and last names. However, a review of the Form I-687 application and the Form G-325A biographic report reveals no information regarding the applicant's use of other names or names he may have been known by during the requisite period despite the fact that these documents specifically request such information and the applicant had provided supporting documentation listing a variety of names.

In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that he or she was in fact the person who used that name. 8 C.F.R. § 245.2(d)(2)(i).

The most persuasive evidence of common identity is a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description. Other evidence which will be considered are affidavit(s) by a person or persons other than the applicant, made under oath, which identify the affiant by name and address and state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to the affiant under the assumed name in question will carry greater weight. Other documents showing the assumed name may serve to establish the common identity when substantiated by corroborating detail. 8 C.F.R. § 245.2(d)(2)(ii).

In the applicant's case, it was he himself who caused his identity to be called into question by providing supporting documents listing a variety of names as proof of his residence in this country for the requisite period. The marked variations in the listings of these names eliminates mere transposition as the source for the variety of names. The applicant has failed to provide any evidence demonstrating that he was also known by the names listed in his supporting documents.

Counsel claims that the applicant's employment with Roy Rogers Restaurant in 1981 was corroborated by the previously submitted Social Security Administration printouts. Counsel states that further documentation from Roy Rogers Restaurants is unavailable because this enterprise had gone out of business. Counsel notes that the applicant has requested additional documents from the Social Security Administration and that such documents would be

forthcoming upon receipt. However, the record shows that as of the date of this decision no additional documents have been submitted by either counsel or the applicant. As noted previously, the applicant provided two Social Security Administration printouts dated July 18, 1990 and November 19, 2002, respectively. Both of these printouts list the applicant's name as [REDACTED] and month and year of birth as June 1956 and indicate that the applicant had earnings of \$261.10 subject to withholding taxes in 1981 with no subsequent earnings through the end of the requisite period on May 4, 1988. Although these printouts tend to corroborate the applicant's residence in the United States for a portion of 1981, the documents do not demonstrate the applicant's continuous residence in the country from 1982 through May 4, 1988. It must be reiterated that the fact that the applicant was employed in 1981 does not establish that he violated status by engaging in unauthorized employment because the record does not contain any evidence demonstrating that he held a valid visa with a period of authorized stay through 1981. Further, the printouts do not contain any evidence reflecting that the employer paying these earnings to the applicant in 1981 was Roy Rogers Restaurants. Moreover, a review of the website at <http://www.royrogersrestaurants.com> shows that this enterprise has been in business continuously since 1968 and is currently a viable wholly owned subsidiary of the Plamondon Companies.

Counsel submits a photocopy of a new letter dated April 25, 2003 bearing the letterhead of Riggs National Bank Embassy Banking Division in Washington D.C. and the signature of the vice president of this division, [REDACTED] who states bank records establish that the applicant maintained a savings account with this bank from January 9, 1981 to January 25, 1982. However, it must be noted that [REDACTED] had previously testified that the applicant established an unspecified banking relationship with the bank on February 23, 1988 in a previous letter dated November 22, 2002. The fact that [REDACTED] did not provide any explanation as to why he had revised his prior testimony or submit the corroborative records referenced in his most recent letter seriously undermines the credibility of his most recent testimony

Doubt cast on any aspect of the evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, in fact, lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The absence of sufficiently detailed supporting documentation and the conflicting and contradictory testimony cited above seriously undermine the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States for the requisite period by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no probative value and conflicting nature of testimony contained in the record, 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 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

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