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U.S. Citizenship and Immigration Services
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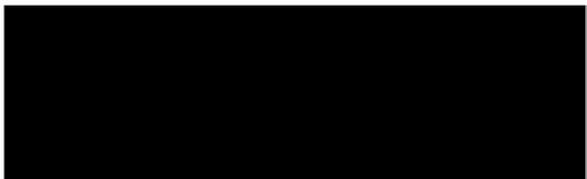
Office: NEW YORK Date:

SEP 22 2009

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).

IN 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, New York, New York, and is now 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 from before January 1, 1982, through May 4, 1988.

On appeal, counsel asserts that the applicant had filed an application for suspension of deportation with the aid of another individual in 1998. Counsel states, “[t]he initial entry date of the applicant was wrongly stated to be 6-15-1988, instead of 04-19-81. Applicant has corrected this date at the I-485; adjustment of status interview and his response to DD’s Notice of Intent to Deny the I-485.” Counsel asserts that the director did not address the affidavits from the witnesses who attested to the applicant’s residence in the United States during the requisite period.

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).

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 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. Here, the applicant has failed to meet this burden.

The record reflects that the applicant's passport was issued in Banjul, Gambia on April 13, 1988. The applicant was issued a nonimmigrant visa at the United States Embassy in Banjul, Gambia on May 31, 1988. The applicant lawfully entered the United States on June 15, 1988 as a nonimmigrant visitor.

The applicant filed a Form I-589, Application for Asylum and for Withholding of Deportation, on August 12, 1993.¹

The applicant filed an Application for Suspension of Deportation on March 11, 1998. At Part 1, items 16 and 19, the applicant listed his residence in the United States from June 15, 1988, and indicated that he first entered the United States on June 15, 1988. At Part 5, item 40, the applicant listed employment in the United States from February 1994 and at Part 7, item 37, the applicant indicated that he was married in 1987. On his Form G-325A, Biographic Information signed October 30, 1997, which accompanied the Application for Suspension of Deportation, the applicant indicated that he resided in his native country, Gambia, from June 1984 to June 1988 and that he was married in Gambia.

On his LIFE application filed October 20, 2001, the applicant indicated that he was single. On his Form G-325A, which accompanied the LIFE application, the applicant indicated that he was never married.

At the time of his LIFE interview, the applicant indicated that he first entered the United States on April 19, 1981 through the Canadian border, and had continuously resided in the United States since that date through May 1988. The applicant indicated that he departed the United States in May 1988 and returned in June 1988.

¹The Form I-589 was denied on September 17, 1996.

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In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided affidavits of residence from five individuals and an employment affidavit dated February 1, 1990, from [REDACTED] who attested to the applicant's employment since spring 1981.

On September 10, 2007, the director issued a Notice of Intent to Deny, which advised the applicant of the information contained in his Gambian passport, Application for Suspension of Deportation and Form G-325A dated October 30, 1997. The applicant was also advised that the affidavits submitted were neither credible nor amenable to verification.

The applicant, in response, reasserted the veracity of his claim to have first entered the United States on April 19, 1981. The applicant submitted an affidavit from an affiant, who claimed to have known the applicant since January 1982 and attested to the applicant's moral character. The applicant also submitted a letter from the manager of New Daynight Car and Limousine Service that has no probative value in this proceeding as it attests to the applicant's employment subsequent to the period in question.

The director determined that the applicant had failed to submit sufficient credible evidence establishing his continuous residence in the United States since prior to January 1, 1982, and, therefore, denied the application on October 24, 2007.

The U.S. Citizenship and Immigration Services (USCIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, *supra*. In ascertaining the evidentiary weight of such affidavits, USCIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits should be analyzed to determine if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by counsel and the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988, as he has presented contradictory and inconsistent documents, which undermines his credibility.

The employment letter failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulation, the letter also failed to 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 addition, the letter raises questions to its authenticity as the applicant indicated on his Application for Suspension of Deportation to have been employed at this company commencing in February 1996.

The applicant indicated on the Application for Suspension of Deportation and Form G-325A that he was married in Gambia in 1987; however, he did not claim this absence on his LIFE application or the Form I-687 application submitted in 1990. The applicant's failure to disclose this absence from the United States is a strong indication that the applicant was not in the United States during this period or may have been outside the United States beyond the period of time allowed by regulation.

The affiants' statements do not provide detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, an affiant's affidavit 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. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits from the affiants do not provide sufficient detail to establish that they had an ongoing relationship with the applicant that would permit them to know of the applicant's whereabouts and activities throughout the requisite period.

A few errors or minor discrepancies are not reason to question the credibility of an alien's immigration benefit. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime an application includes numerous errors and discrepancies, and the applicant fails to credibly resolve those errors and discrepancies after USCIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the applicant's assertions.

Doubt cast on any aspect of an applicant's proof 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. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988). The applicant submitted no competent objective evidence resolving the inconsistencies in the record. Therefore, the reliability of the affidavits offered by the applicant is suspect, and it must be concluded that he has failed to establish by a preponderance of the evidence that it was more likely than not that he resided continuously in the United States during the qualifying period.

The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant 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.