

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

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**

L2

[Redacted]

FILE: [Redacted]

Office: NEW YORK

Date: **AUG 10 2010**

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.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION: 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 applicant submitted a Form I-485, Application to Register Permanent Resident or Adjust Status. The director denied the application, finding that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, the director found that the applicant obtained a passport in Nigeria in February 1983, and that she failed to list this absence on her Form I-687. The director found that the applicant first entered the United States as a J-2 nonimmigrant in April, 1985. The director denied the application.

On appeal, the applicant asserts that the director did not give her a full 30 days to submit evidence requested by the Notice of Intent to Deny (NOID). She states that her husband obtained her passport for her in Nigeria in February 1983, as was customary. The applicant asserts that she has established her continuous unlawful residence in the United States during the requisite period.

Preliminarily, the AAO notes that the applicant timely submitted a response to the NOID dated October 5, 2009, which response was considered by the director in the final decision dated October 22, 2009. The regulation at 8 C.F.R. § 103.2(b)(11) requires an applicant, in response to a NOID, to submit all requested material together at the same time; submission of only some of the requested evidence will be considered a request for a decision on the record. The director thus did not err in issuing the decision following receipt of the applicant's response to the NOID, but prior to the lapse of the full 30-day response period.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b). The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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).

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of her claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of affidavits from friends, copies of leases, receipts, performance ratings, Forms W-2 from 1986 and 1987 and a social security earnings statement indicating that the applicant earned income in the United States in 1986 through the end of the requisite period. Evidence of residence in the United States outside the requisite period will not be considered.

The evidence establishes that: the applicant gave birth to a son in Nigeria on June 8, 1981; the applicant was issued a passport in Calabar, Nigeria on February 7, 1983; the applicant's husband entered the United States on a J-1 visa in June 1983 and was a student in J-1 visa status at Ohio State University from 1983-1990; the applicant and her son entered the United States in J-2 visa status on April 17, 1985. The record establishes that the applicant resided continuously in the United States from April 17, 1985 through the end of the requisite period. The AAO agrees with the director, however, that the evidence does not establish the applicant's residence in the United States since prior to January 1, 1982.

The applicant asserts that she entered the United States through Canada in October, 1981 using a false passport. She was not accompanied by her husband or son. At an interview she stated that she lived with her uncle for approximately one year on Oakland Avenue in Columbus, Ohio. She then moved in with a friend in the same building until her husband arrived in 1983. For employment, she typed papers for students at the university, did some babysitting, and took care of an elderly lady. She stated that her first real job was housekeeping at a hotel in late 1985 or 1986. She then got a job at [REDACTED] as a typist in early 1986. On appeal, she states that her husband obtained her passport for her in February, 1983 as was allowed, and submits correspondence seeking to obtain confirmation from Nigerian officials that her physical presence was not required to obtain a passport.

There are internal inconsistencies in the applicant's statements concerning her residences and employment in the United States from 1981-1985. The applicant did not initially list the Oakland Avenue residence with her uncle from 1981-1983 on the Form I-687 signed under penalty of perjury on July 27, 1990; the address appears to have been added at an interview. On the Form I-687 the applicant signed on May 26, 2002 under penalty of perjury, she did not include any residential address prior to May, 1985, and no employment prior to August 1986 when she began to work for Ohio State University. On the Form I-687 signed by the applicant on July 27, 1990, the applicant listed her first employment in the United States beginning in December 1985 with University Park Hotel, and her first job with Ohio State University beginning in September 1986. On the Form I-687 signed by the applicant on May 26, 2002, the applicant listed no employment prior to August 1986 when she began to work for Ohio State University. The applicant did not list her jobs as a babysitter, home health aide or as a typist for students on either of the noted Forms I-687. The current Form I-687 signed on January 13, 2005 lists no employment prior to August 1986 when she began to work for Ohio State University and lists her United States residence beginning in October 1981 on Oakland Avenue.

The affidavits of [REDACTED]

[REDACTED] state generally that the applicant resided in the United States for some part of the requisite period. The witness statements fail to provide concrete information, specific to the applicant and generated by the asserted associations with her, 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 the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

As noted by the director, the Forms I-687 declaring the applicant's single absence from the United States in April 1985 is contradicted by the copy of her passport in the record indicating that it was issued to her on February 7, 1983 in Calabar, Nigeria. Although the applicant

contends, and has attempted to obtain a letter from Nigerian officials indicating that her physical presence in Calabar was not required to obtain the passport, no objective evidence of record establishes such contention. The applicant submits correspondence from family members and an attorney in Nigeria, who have been unable to obtain a declaration from a Nigerian official that obtaining a passport by proxy was customary or allowed in 1983. The affidavits of the applicant's friends and the applicant's own statements do not provide sufficient detail to establish the applicant's continuous residence in the United States from prior to January 1, 1982 through April 17, 1985.<sup>1</sup> The AAO agrees with the director that the record establishes that it is more likely than not that the applicant first entered the United States with her son on April 17, 1985.

The evidence of record provides contradictory information, and no explanation is provided for those contradictions. The contradictions are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Considering the internal inconsistencies in the Form I-687 applications regarding the applicant's residences and employment from 1981-1985, the lack of detailed affidavits from her witnesses, and the fact that the applicant was in Nigeria at a time when she claimed to be in the United States, the AAO finds that the applicant has not established her continuous unlawful residence in the United States since before January 1, 1982.

Beyond the decision of the director, the applicant is inadmissible to the United States and is thus ineligible for adjustment to temporary residence. An applicant for temporary resident status under section 245A of the Act has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. 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 record indicates that the applicant willfully misrepresented a material fact when she obtained and entered the United States on a nonimmigrant J-2 visa with the intention of permanently residing in the United States. Her misrepresentation of a material fact renders her inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i) and thus ineligible for relief under Section 245A. Section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i), permits the Secretary of Homeland Security to waive certain grounds of

---

<sup>1</sup> The AAO finds above that the applicant has established her continuous residence in the United States from April 17, 1985 through the end of the requisite period.

inadmissibility, including inadmissibility under section 212(a)(6)(C)(i) of the Act, "in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest." Although the applicant has filed for a waiver of inadmissibility, the Form I-690 application has not been adjudicated. She is thus currently ineligible for relief on this basis as well.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of her claim. Given the applicant's reliance upon documents with minimal probative value, and the noted inconsistencies in her Forms I-687, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, she 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.