

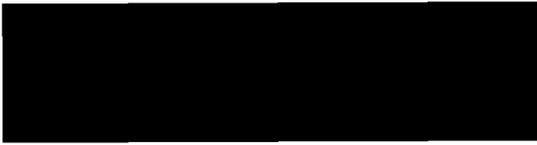
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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FILE:



Office: NEWARK

Date: JUL 27 2010

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.

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 in Newark, New Jersey. An appeal was filed, but rejected by the Chief, Administrative Appeals Office (AAO), on the ground that it was not filed within the 33-day period prescribed in the regulations.

Upon review of the record, the AAO now determines that the application was timely filed. Accordingly, the AAO will reopen the proceeding *sua sponte* and consider the appeal on the merits.

The director denied the application on the ground that the applicant failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. On appeal counsel asserts that the documentation of record does establish the applicant's continuous residence in the United States during the requisite period.

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).

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.

The regulations provide an illustrative list of documents – which includes affidavits and “any other relevant document” – that the applicant may submit as evidence of continuous residence in the United States during the requisite period under section 245A of the Act. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant, a native of Ghana who claims to have resided in the United States since January (or June) 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on October 26, 2001.

On March 7, 2003, the director issued a notice of intent to deny the application, stating that the documentation of record contained little evidence of the applicant’s residence in the United States during the requisite time period for legalization under the LIFE Act. The applicant was granted 30 days to submit additional evidence. The applicant responded with some affidavits and other documents.

On July 26, 2004, the director issued a decision denying the application on the ground that the documentation submitted by the applicant was insufficient to overcome the grounds for denial. Accordingly, the application was denied for failure to establish the applicant’s continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Counsel filed an appeal (Form I-694), which bears a receipt stamp dated November 1, 2004. Since this date was not within the 33-day filing period for appeals, as prescribed in the regulations at 8 C.F.R. § 245a.20(b)(1), the AAO issued a decision rejecting the appeal on November 19, 2009.

Upon review of the record, however, it is now evident that the appeal was actually submitted to the Newark office on August 24, 2004 – within the requisite time period for an appeal. Therefore, the AAO will reopen this case *sua sponte* and consider the appeal on the merits.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. Department of Justice*, 381 F.3d 143, 145 (3d Cir. 2004).

The salient issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The record contains conflicting statements by the applicant and conflicting documentation regarding the time frame of the applicant’s arrival in the United States and when his continuous residence in this country began.

For example, the applicant stated on his Form I-485, filed in October 2001, that he arrived in the United States in January 1981, which accords with a Form 325A (Biographic Information) he filed at the same time, identifying his prior residence as located in Accra, Ghana, from

October 1964 (the month of his birth) until January 1981. An affidavit from [REDACTED], dated March 27, 2003, stated that the applicant resided with him at [REDACTED] New York, from June 1981 to March 1990. The foregoing information in the Form G-325A and the affidavit conflicts with information provided by the applicant at the time he filed a previous Form I-485 at the Newark office in September 1997. The Form G-325A that accompanied the earlier Form I-485 initially identified the applicant's last address outside the United States as [REDACTED] from January to November 1985. The dates were subsequently altered by pen, without further explanation on the form, to read from January 1980 to November 1981.

As another example, an application for temporary resident status (Form I-687) filed by the applicant at the Manhattan legalization office in September 1989 listed [REDACTED] in New York City as the applicant's only residence in the United States since his first entry into the country. The dates of residence were listed as June 1985 to the present (September 1989). An affidavit from [REDACTED], dated September 21, 1989, stated that the applicant had resided with him at the above address since June 1981. The foregoing information conflicts with that provided by the [REDACTED] in his 2003 affidavit and by the applicant on a later Form I-687 he filed in 2004 [REDACTED]¹ which identified the applicant's address from June 1981 to March 1990 (like the Form I-485 filed in 2001) as [REDACTED]. Furthermore, in the earlier Form I-687 the applicant listed three employers during the 1980s which are totally inconsistent with the two employers he listed for those years in the later Form I-687.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). No explanation has been provided for any of the myriad inconsistencies discussed above. Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.*

There is no documentation in the record showing that the applicant was present in the United States at any time before 1989. As evidence that he was in the country before then the applicant has submitted a series of affidavits (some submitted in support of the Form I-687 application filed in 2004) from individuals who claim to have lived with, worked with, or otherwise known the applicant during the 1980s. The affidavits are all minimalist documents with few details about the applicant's life in the United States during those years. Perhaps most importantly, the affidavits do not resolve the conflicting information from two of the affiants, [REDACTED] and [REDACTED] (the only two who identified an address for the applicant during the 1980s) – each of whom claimed to have lived with the applicant at completely different addresses between 1981 and 1990. Nor have any of the affiants provided documentary evidence – such as photographs, letters, and the like – of their personal relationship with the applicant in the United

¹ This application was denied by the Newark office on October 4, 2007. An appeal was dismissed by the AAO on November 19, 2009.

States during the 1980s. In view of these substantive shortcomings and conflicts, the affidavits in the record have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States during the years 1981-1988.

The only other evidence of the applicant's presence in the United States before 1989 are (1) a photocopied document on the letterhead of the Consulate-General of Ghana in New York City, dated March 20 2003, stating that the applicant registered with the Consulate on July 23, 1981, and (2) a photocopied document on the letterhead of [REDACTED] New York, dated March 26, 2003, stating that the applicant had been a patient since February 1, 1986. Neither document was submitted in the original, which makes it more difficult to determine their authenticity. Even if the applicant did register at Ghana's consulate in 1981, that act alone would not establish that the applicant maintained continuous residence in the United States in subsequent years. Even if the applicant was a patient at the [REDACTED] as of February 1986, that would not demonstrate his residence or physical presence in the United States in prior years. In view of these substantive shortcomings and the applicant's overall lack of evidentiary consistency, the AAO regards these two documents skeptically. They are not persuasive evidence of the applicant's continuous residence in the United States during the years 1981 to 1988.

Based on the foregoing analysis, the AAO determines that the applicant has failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. 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.