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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

[REDACTED]

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FILE:

[REDACTED]

Office: HOUSTON Date:

MAR 14 2011

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: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Houston, Texas 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. The director found that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, the director noted that the applicant departed the United States numerous times during the relevant period and failed to disclose his departures or address the length of his absences.

On appeal, through counsel, the applicant submits a Form I-290B, indicating that he is appealing the decision of the director, however, he does not indicate a basis for that appeal or submit any additional evidence. The applicant requests a copy of the record of proceedings. This request was processed on August 3, 2010.¹

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Following *de novo* review, the AAO finds that the applicant has failed to establish his continuous residence in the United States from January 1, 1982 through the end of the relevant period.

An applicant for permanent resident status 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).

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 under the provisions of section 212(a) of the 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 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. 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 "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 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 (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.

The issue in this proceeding is whether the applicant has established that he (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. In support of his eligibility, the applicant submits the following:

- Affidavits from [REDACTED] and [REDACTED]. All of the affiants attest to the fact that the applicant attempted to file his legalization paperwork but was turned away in late 1987.
- [REDACTED] indicate that the applicant worked for them during the relevant period. The letters fail to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether United States Citizenship and Immigration Services (USCIS) may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The statements submitted do not include much of the required information and can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

As noted by the director, the applicant has provided inconsistent information regarding the dates of his absences during the relevant period. Specifically, the applicant submitted a Form I-687 Application for Temporary Resident Status in 1990 indicating that he departed the United States only one time during the relevant period, in 1987. He affirmed this fact in his October 17, 2002 interview

with USCIS stating that he left the United States in August 1987 for one month to visit a sick friend. On his Form I-687 filed in 2005, the applicant lists the following trips during the relevant period:

- February 1, 1983 until February 9, 1983 to Ghana
- March 1, 1984 to March 3, 1984 to Liberia
- April 1, 1985 to April 13, 1985 to Liberia, India, and Belgium
- May 18, 1985 to May 29, 1985 to India, Bangkok, Singapore, etc.
- June 20, 1985 to June 27, 1985 to Belgium, India, U.K.
- December 21, 1985 to December 28, 1985 to Liberia
- August 1, 1986 to August 8, 1986 to Liberia
- September 9, 1986 to September 13, 1986 to Ghana, Togo
- March 28, 1987 to April 14, 1987 to Togo
- August 8, 1987 to September 4, 1987 to Canada
- December 24, 1987 to December 31, 1987 to India
- January 13, 1988 to January 19, 1988 to the UK
- February 9, 1988 to February 16, 1988 to Ghana
- May 14, 1988 to May 21, 1988 to Liberia

The director notes that the applicant shall be regarded as having resided continuously in the United States if at the time the application for temporary resident status is considered filed, as described above pursuant to the CSS/Newman Settlement Agreements, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days during the requisite period unless the applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the applicant was maintaining a residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h).

The AAO notes that the applicant submits a copy of his passport [REDACTED] which was issued in 1983 in Accra, Ghana. The passport also contains a B1 visa issued in Monrovia, Liberia on March 2, 1984 and an entrance stamp to the United States dated April 14, 1987. The AAO has reviewed the entry stamps and exit stamps contained in the applicant's passport. Some of the stamps are unclear and the exact dates of travel cannot be discerned. There are some discernable inconsistencies. For example, the passport contains a stamp from the Passport Control Office in Monrovia Liberia granting the applicant entry to Ghana dated 9/12/1985. The applicant indicates that the only time during 1985 that he was in Liberia was April 1, 1985 to April 13, 1985 and December 21, 1985 to December 31, 1985. These dates are inconsistent.

Furthermore, it is clear that the applicant traveled extensively during the relevant period and failed to disclose his absences on his previous Form I-687. It is also clear that, while the applicant states that no single absence exceeds 45 days and the total absences likely do not exceed 180 days, the applicant bears the burden of proving his continuous residence by a preponderance of the evidence. The inconsistencies in his testimony have not been addressed. These material inconsistencies cast doubt on the reliability of the testimony provided by the applicant.

The applicant has not submitted any objective independent evidence which clarifies his absences and/or supports his continuous residence throughout the relevant period. Thus, the AAO agrees with the director that the applicant has not established his continuous residence in the United States throughout the relevant period due to the inconsistencies in his testimony regarding his absences.

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 he is eligible for the benefit sought.

Given the applicant's reliance upon documents with minimal probative value, and the multiple inconsistencies noted, 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.