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



U.S. Citizenship
and Immigration
Services



DATE: **JUN 10 2015**

FILE: [REDACTED]
APPLICATION RECEIPT: [REDACTED]

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]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not established that she resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. The director noted that the applicant failed to overcome the reasons for denial stated in the Notice of Intent to Deny (NOID).

On appeal, the applicant through counsel asserts that the applicant has overcome the reasons for denial. Counsel submits a statement from the applicant.

The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.¹

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 (the Act) 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 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

¹The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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.

In the Notice of Intent to Deny (NOID), dated December 15, 2006, the director notified the applicant that the record lacked sufficient evidence demonstrating her continuous unlawful residence and her physical presence in the United States during the requisite period, the director also noted that the applicant lacked credibility in her claim as there were significant discrepancies between the applicant's oral testimony the record. The director also noted that in her oral testimony on January 31, 2003, the applicant did not provide detail of her claimed entry without inspection in May 1981, into the United States from Canada; her claimed departure from the United States and her entry into Canada on May 20, 1987; and her claimed re-entry, without inspection, into the United States from Canada on May 30, 1987. In addition, the director noted that the applicant was inadmissible for willfully misrepresenting a material fact in order to gain an immigration benefit. The director granted the applicant 30 days to submit additional evidence.

In the Notice of Decision, dated April 23, 2007, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant did not submit additional evidence, and the record does not reflect a response to the NOID.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she continuously resided in the United States in an unlawful status during the requisite period. The applicant submitted evidence, including letters and affidavits as evidence to support her adjustment application. We have reviewed the entire record and find the submitted evidence is not probative or credible.

At her interview before an immigration officer on January 31, 2003, the applicant testified that she first entered the United States without inspection through the Canada border in May 1981; that she first departed the United States to visit Canada on May 20, 1987; and that she re-entered the United States via the Canadian border, in the vicinity of [REDACTED] on May 30, 1987. To support her claims of continuous residence, the applicant submitted:

- 1) An Affidavit of Residence, dated August 14, 1989, from [REDACTED], stating that the applicant resided with him at [REDACTED] since

February 1983. The affiant does not indicate how he dates his acquaintance with the applicant, nor does he indicated under what circumstances the applicant resided with him. The affiant does not provide relevant details of his acquaintance with the applicant although he attests that she resided with him for several years.

- 2) A letter, dated August 10, 1989, from Dr. [REDACTED] located at [REDACTED] New York, stating that he first treated the applicant at the clinic on January 12, 1985. Dr. [REDACTED] also states that the applicant's last visit at the clinic was on April 13, 1987. Dr. [REDACTED] letter, is not supported by any evidence and he does not state how he dates his knowledge of the applicant's visit and treatment at the clinic.²
- 3) A letter from [REDACTED] dated July 18, 2001. Mr. [REDACTED] states that he has known the applicant since 1985. He also attests to the applicant's work ethic, her aspirations, her religious activities, and other aspects of the applicant's personality. However, Mr. [REDACTED] does not indicate when and where in 1985 he first met the applicant, how he first became acquainted with the applicant, how he dates their acquaintance, whether and to what extent he maintained contact with the applicant after their acquaintance, and whether and how he gained knowledge of the applicant's residence in the United States during the relevant period.
- 4) A copy of a mail envelope, date stamped in July 1983, addressed to [REDACTED] at [REDACTED]

Contrary to counsel's assertion, the affidavits the applicant submits lack detail. In addition, the mail envelope is clearly questionable, because the addressee on the envelope is [REDACTED] and it is date-stamped 1983. In her affidavit dated September 15, 2007, submitted on appeal, the applicant states that she adopted use of the name [REDACTED] in 1987, after she returned to New York from Florida after her marriage fell apart. The applicant attested that she decided to assume that name after returning to New York from Florida for fear of being discovered by her former husband's girlfriend, who had subjected her to threats and intimidation while she resided in Florida. On her divorce judgment, dated March 14, 1994, the applicant's name, as the plaintiff, is [REDACTED]. The envelope is date-stamped 1983, yet it is addressed to [REDACTED] although the applicant attests she had not yet assumed that name. Moreover, the affiants do not indicate having known the applicant as [REDACTED] although they attest to having known her when she had not yet assumed the name [REDACTED]. These documents provided, therefore, lack probative value.

These discrepancies cast considerable doubt on whether the evidence the applicant provides in support of her application is genuine and whether she has resided in the United States since prior to January 1, 1982, as she claims. 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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and

² The director deemed Dr. [REDACTED] letter not credible, noting that he is known for supplying unwarranted documents to Ghanaian nationals. The applicant does not address the director's concern regarding Dr. [REDACTED] letter on appeal.

attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has not submitted objective evidence to explain or justify the discrepancies in her testimony and in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, we conclude that she also has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Because the applicant has not established her continuous unlawful residence in the United States throughout the requisite period, the record does not establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from that date through the date she attempted to file a Form I-687, during the original one-year application period that ended on May 4, 1988.

The next issue in this proceeding is whether the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for having misrepresented a material fact to obtain an immigration benefit.

Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record reflects that on her Application for Permission to Depart Temporarily from the United States, filed on December 17, 1991, the applicant stated that her last entry into the United States was on May 30, 1987. The applicant's parole application was approved and she was paroled into the United States on July 30, 1992, to complete 245A proceedings. The record also includes a copy of the applicant's Ghana passport, under the name [REDACTED] issued April 7, 1987, with a U.S. non-immigrant visa, issued in [REDACTED] on October 5, 1987, and indicates that the applicant entered the United States as a non-immigrant on October 24, 1987, with authorization to remain until April 23, 1987. It is unlikely that the applicant's parole application would have been approved had the applicant revealed her name and that she last entered the United States in October 1987, as a B-2 non-immigrant.

Counsel asserts on appeal that the applicant changed her name to [REDACTED] because she was being threatened and intimidated by her former husband's girlfriend and not to gain an immigration benefit. However, as discussed above, the applicant failed to disclose her name, [REDACTED] and her entry on October 24, 1987 with a non-immigrant visa to obtain an immigrant benefit. Therefore the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

As the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, had she been otherwise eligible for the benefit sought, she would require a waiver under section 212(i) of the Act, which provides:

(i) (1) The Attorney General [now the Secretary of the Department of Homeland Security (Secretary)] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. It is not clear from the record whether the applicant has a qualifying relative. Hardship to an applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). However, here no purpose would be served in addressing the applicant's eligibility for a waiver, as the applicant has not established her eligibility for permanent resident status under the LIFE Act.

For this additional reason, the director's decision to deny the application must be affirmed.

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