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U.S. Citizenship
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Services

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FILE:

MSC 02 143 65638

Office: NEW YORK Date:

APR 22 2008

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.

 Robert P. Wiemann, 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 district 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 requested an extension of 30 days in which to supplement the appeal. Subsequently, counsel submits additional evidence in support of the appeal.

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. Section 1104(c)(2)(B)(1) of the LIFE Act; 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 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 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.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- A national identification card issued by the Minister of Interior of Senegal on January 19, 1982.
- A notarized affidavit from [REDACTED], owner of [REDACTED] in Elmhurst, New York, who indicated that the applicant was in her employ from June 1982 to March 1986 as a delivery man.
- An affidavit notarized October 12, 1990, from [REDACTED], personnel for Bay Sales, Co., in New York, New York, who attested to the applicant's employment as a stock person since April 1986.
- A notarized affidavit from [REDACTED] of New York, New York, who attested to the applicant's New York residence since January 1982.
- A notarized affidavit from building manager [REDACTED] of New York, New York, who attested to the applicant's New York residence since December 1981, and attested to the applicant's moral character.
- A letter dated September 14, 1990, from [REDACTED], public information for Masjid Malcolm Shabazz in New York, New York, who indicated the applicant has been a member since October 1981, and attended Friday Jumah prayer services as well as other prayer services at the Masjid.
- A photocopied letter dated January 1, 1981, from a secretary of Masjid Malcolm Shabazz in New York, New York, requesting authority to allow the applicant to attend religious services on Fridays.
- An affidavit notarized October 24, 1990, from [REDACTED], who claimed to be a doctor at Morris Heights Health Center and indicated the applicant has been a patient since December 1981. It is noted that the affiant did not list his credentials.

The applicant also submitted notarized affidavits from several affiants; however, the affidavits have no probative value or evidentiary weight as [REDACTED] did not sign the affidavit and the remaining affiants met the applicant subsequent to the requisite period.

The director, in issuing her Notice of Intent to Deny dated April 5, 2006, advised the applicant that the affidavits submitted were insufficient to establish continuous residence in the United States during the requisite period. The applicant was also advised that the national identification card issued in Senegal on January 19, 1982, cast further doubt upon the veracity of his claim of entry into the United States.

Counsel, in response, asserted that the notarized unsigned affidavit from [REDACTED] was "accidentally submitted in place of a signed copy of the same letter. Counsel asserted that the applicant received the national identification card in the United States through the Senegalese Embassy in Washington, D.C. Counsel claimed that the applicant "has attempted to contact someone at the Embassy who remembers the episode, but has been unable to." Counsel further claimed that his office had sent a letter to the Embassy, requesting pertinent records, but, has not received any response to date. Counsel submitted photocopies of documents previously presented along with the following:

- A notarized affidavit from [REDACTED] of New York, New York, who indicated he first met the applicant at a friend's house in December 1981. The affiant asserted that the applicant was residing with his friend, [REDACTED] at the time. The affiant asserted that he has remained friends with the applicant since that time and "I can assure you that [the applicant] has never left the United States since 1981."
- A photograph of the applicant purportedly taken during the requisite period.

- A photocopy of a signed affidavit from [REDACTED], who indicated that she drove the applicant from New York City through the Canadian border on November 19, 1987, and upon his return from Senegal, she drove the applicant back from Canada to New York on December 3, 1987.
- A photocopied letter dated April 24, 2006, from a legal assistant to counsel addressed to the Senegal Embassy in Washington, D.C. regarding the applicant's national identification card.

Counsel also submitted a declaration from the applicant who reaffirmed the veracity of his claim to have entered the United States on December 3, 1981. The applicant indicated that he resided with a friend, [REDACTED] at [REDACTED], New York, New York, but moved after approximately three months, "because the rent was so high there." The applicant indicated that he then resided at [REDACTED] rent-free with a friend, [REDACTED] while he looked for employment.

Regarding his national identification card, the applicant asserted, in pertinent part:

Right when I got to New York, I contacted the Senegalese Embassy in Washington. I told them that I had applied for a Senegal national identification in 1980, but still had not received the identification. I wasn't to have that identification so that I could have proof of my identity here in the US. The Embassy told me that they would call the office in charge of identification in Senegal to ask about my ID, and to request that the ID be sent to them in Washington when it was ready.

In or about January of 1982, I received a call from the Embassy telling me that they had received my identification and that I should come pick it up. I went to the Embassy in Washington and got my identification. Please understand that I was in New York when my Senegalese identification was issued, and that I got it through the embassy.

* * *

After reading the notice, I also contacted the Embassy to see if they had any records of receiving my Senegalese identification there in early 1982, but I was told that it's been such a long time that they don't have those records and that no-one who worked there in early 1982 still works there.

On appeal, counsel submits photocopies of receipts dated September 23 and 30, 1982, and February 12, 1985, and an affidavit from [REDACTED], of New York, New York. [REDACTED] indicated, "I have known [the applicant] for many years, we actually met for the first time in 1981 in one of my friend's [REDACTED] house. [The applicant] was staying with him after he had moved from [REDACTED]s house where he was required to pay rent. [REDACTED] offered him free accommodations." [REDACTED] further indicated that he has remained friends with the applicant since that time and attested to the applicant's work within the Senegalese community, and to the applicant traveling to Washington, D.C. to obtain his national identification card in January 1982. [REDACTED] indicated, "I can certify that [the applicant] has been in the United States since 1981 to this day and he has never left."

Citizenship and Immigration Services (CIS) 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, CIS 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 would not necessarily be fatal to the applicant's claim, 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 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. Specifically:

1. On his original Form I-687 application signed October 14, 1990, the applicant did not claim any residence in the United States prior to March 1982. It is noted that the application was prepared by [REDACTED], whom the applicant purportedly resided with upon his arrival to the United States. No attestation has been provided from [REDACTED] corroborating the applicant's claim to have resided with him in 1981.
2. In the affidavit notarized October 12, 1990, [REDACTED] attested to the applicant's employment since April 1986. However, on his Form G-325A, Biographic Form, signed April 25, 2004, the applicant indicated that he had been self-employed from December 1987 to 2000.
3. The letter dated January 1, 1981, from Masjid Malcolm Shabazz raises questions as to its authenticity as the applicant never claimed to have been in the United States in January 1981. The fact that this letter along with the stamp insignia of the signatory are photocopies while the applicant's name and the date of the letter are in original format further raises questions to the authenticity of the letter and to the credibility of the notary.
4. The letter from [REDACTED] has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the affiant does not explain the origin of the information to which he attests.
5. The photograph has no identifying evidence that could be extracted which would serve to either prove or imply that the photograph was taken in the United States and during the requisite period.
6. [REDACTED] asserted that the applicant had been a patient since 1981. However neither appointment notices nor receipts, which would add credibility to the affiant's claim, were provided by the applicant.
7. [REDACTED] indicates that she drove the applicant to and from Canada in 1987; however, Mr. [REDACTED], and [REDACTED] both indicated that the applicant had never left the United States.
8. [REDACTED] and [REDACTED] attested to the applicant's residence since December 1981 and January 1982, respectively but provided no address for the applicant during the period in question.
9. [REDACTED] indicated that he met the applicant in 1981 when the applicant was staying at [REDACTED]'s home. The applicant, however, indicated that he resided with [REDACTED] for approximately three months prior to moving to [REDACTED]'s residence. Therefore, [REDACTED] could not have met the applicant in 1981, but rather in March 1982 at [REDACTED]'s residence.
10. The applicant claims to have obtained his national identification card from the Senegal Embassy in Washington, D.C., and was informed that they no longer had records to establish that the identification card was issued at the Embassy. The applicant, however, provided no official documentation from the Embassy to corroborate this statement. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden

of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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 regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE 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 periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. 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.