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U.S. Citizenship
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FILE: [REDACTED]
MSC 02 252 61378

Office: NEW YORK

Date: APR 22 2008

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:



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.


for 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 (director) in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he maintained continuous residence in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant's nearly six-month absence from the United States in 1987 was due to a family emergency and should not be deemed as having interrupted his continuous residence in the United States.

To be eligible for adjustment to permanent resident status under the LIFE Act an applicant must establish his or her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and 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).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1) as follows: “An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.”

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.

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.

The applicant, a native of Senegal, filed his application for permanent resident status under the LIFE Act (Form I-485) on June 9, 2002.

In a Notice of Intent to Deny (NOID), issued on February 24, 2006, the director cited the applicant’s testimony at his LIFE legalization interview on April 13, 2004, that he entered the United States from Canada in June 1981, resided at two different addresses in New York City from 1981 until May 1987, traveled to Senegal to visit family on May 5, 1987, and returned to the United States on October 28, 1987. The director concluded that this absence from the United States interrupted the applicant’s “continuous residence” in the United States during the statutory period of January 1, 1982 through May 4, 1988, and noted that the applicant had not shown any “emergent reasons” for such a long absence. The applicant was granted 30 days to submit additional evidence that he fulfilled the continuous residence requirement for legalization under the LIFE Act. The applicant did not respond to the NOID.

On March 23, 2006, the director denied the application for the reasons stated in the NOID.

On appeal, counsel asserts that the applicant’s absence from the United States in 1987 – nearly six months in length – was due to an emergency situation stemming from his brother’s death in Senegal on May 2, 1987, and the hospitalization of his brother’s wife from January to November 1987. As explained by counsel, the applicant flew to Senegal three days after the death of his brother, [REDACTED], to attend the funeral. Since his brother’s wife, [REDACTED], was hospitalized at the time and unable to care for their four minor children, the applicant remained in Senegal to render assistance and to register them for school in the new academic year that began in October 1987. In counsel’s view, this chain of events constituted “emergency reasons” for the applicant’s extended absence from the United States, and did not interrupt his continuous residence in this country. Additional documentation submitted on appeal includes photocopies of the death certificate of the applicant’s father, birth certificates of the applicant’s brothers,

[REDACTED] and [REDACTED], and a notarized attestation from the surviving brother, [REDACTED], dated April 5, 2006, that the applicant traveled to Senegal for the funeral and burial of their deceased brother in May 1987, and that “[d]ue to family reasons and procedures regarding inheritance, he had to stay in Senegal until the end of October, after registration of children in school and at the end of [REDACTED]’s mourning.”

It is undisputed that the applicant’s nearly six-month absence from the United States – extending from May 5 to October 28, 1987 – far exceeded the 45-day maximum prescribed in the regulation at 8 C.F.R. § 245a.15(c)(1). An absence of such duration interrupts an alien’s continuous residence in the United States unless (s)he can show that a timely return to the United States could not be accomplished due to emergent reasons. While the term “emergent reasons” is not defined in the regulations, there is some pertinent case law. In *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), the Board of Immigration Appeals held that *emergent* means “coming unexpectedly into being.”

The applicant flew to Senegal on May 5, 1987 to attend his brother’s funeral and attend to related family matters, but has not presented a persuasive case that any emergent reason(s) made it necessary for him to remain in Senegal for close to half a year. While the applicant asserts that his sister-in-law was hospitalized from January to November 1987, no medical records or other documentary evidence thereof has been submitted. While the applicant asserts that he had to care for his deceased brother’s children and register them for school during their mother’s hospitalization, he has not explained why the other surviving brother, who apparently resides in Senegal, could not have taken over this responsibility. Nor has the applicant’s surviving brother provided any details or documentary evidence in support of his claim that “procedures regarding inheritance” necessitated the applicant’s extended stay in Senegal.

Based on the paucity of evidence in the record, the AAO concludes that the applicant has failed to establish that emergent reasons, within the meaning of 8 C.F.R. § 245a.15(c)(1), prevented his return to the United States from Senegal in 1987 within the 45-day period allowed in the regulation.

Thus, 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, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under section 1104 of 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.