

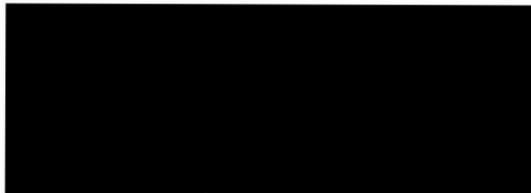
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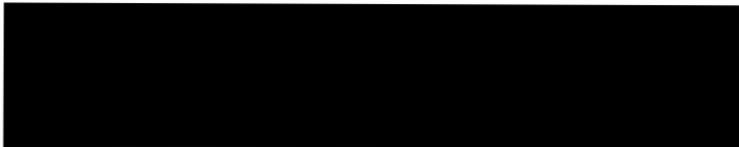


FILE: [Redacted]  
MSC 02 113 62240

Office: NEW YORK CITY

Date: DEC 01 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.

John F. Grissom, Acting 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 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 she entered the United States before January 1, 1982 and 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 director failed to properly evaluate the evidence submitted by the applicant. Counsel further asserts that the applicant has provided sufficient evidence to establish that she continuously resided in the United States in an unlawful status for the requisite time period for legalization under the LIFE Act.

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).

“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.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(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 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 Tunisia who claims to have lived in the United States since August 1981, filed her application for legal permanent resident status under the LIFE Act (Form I-485) on January 21, 2002.

In a Notice of Intent to Deny (NOID) dated August 10, 2007, the director cited inconsistencies between the applicant’s testimony at her interview on February 24, 2004 and documentation in the record regarding her arrival in the United States and her continuous unlawful residence during the statutory period required for legalization under the LIFE Act, as well as a lack of supporting documentation. The director indicated that the inconsistencies undermined her credibility. The applicant was granted 30 days to submit additional evidence.

In response, the applicant submitted some explanations for the evidentiary discrepancies and lack of documentation. On July 6, 2007, the director issued a Notice of Decision denying the application. The director indicated that the response to the NOID was insufficient to overcome the grounds for denial.

On appeal, counsel asserts that the director did not properly consider the evidence submitted by the applicant. Counsel asserts that the applicant has submitted sufficient credible evidence to establish that she resided in the United States continuously during the requisite period for LIFE legalization. Counsel submits no additional documentation with the appeal.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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

The documentation that the applicant submits in support of her claim to have arrived in the United States before January 1982 and resided in an unlawful status during the requisite period consists of the following:

- Notarized statements from Cleopatra Limousine Limited, Oakdale Dairy Store, Inc., R&G Business Products, Inc., and As-Sahafah Newspaper.
- Notarized statements from a representative of Masjid Alfalah in Corona, New York, and from the Chairman, Islamic Affairs, of Abu Bakr El-Seddiqie Mosque (location not specified).  
A notarized statement from The Bank of New York (address not specified).  
A notarized statement from Dr. ██████████ Metropolitan Hospital Center, in New York City.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The employment statements from Cleopatra Limousine Limited, Oakdale Dairy Store, Inc., R&G Business Products, Inc., and As-Sahafah Newspaper, attesting that the applicant was employed in various job positions from 1981 through 1988, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they did not identify the applicant's address at the times of employment (extending from September 1981 to October 1988), did not indicate whether the information about the applicant's employment was taken from company records, and did not indicate whether such records are available for review. The affidavits were not supplemented by earnings statements, pay stubs, tax records or other documentation demonstrating that the applicant was employed during any of the years claimed. For the reasons discussed above, the AAO determines that the employment documentation has limited probative value. It is not

persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The statements from [REDACTED] of Masjid Alfalah, attesting that the applicant had been "visiting our Masjid frequently for the purpose of congregational prayers since November 1981," and from [REDACTED] of Abu Bakr El Seddique Mosque, attesting that the applicant had been "registered with us for membership since August 1981," do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. [REDACTED] and [REDACTED] did not state where the applicant lived at any point in time between 1981 and 1988, did not indicate how and when they met the applicant, and did not state whether the information about her "visiting our Masjid since November 1981" and being "registered with us for membership since August 1981" was based on their personal knowledge, mosque records, or hearsay. Since the statements do not comply with sub-parts (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that they have little probative value. The statements are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The statement from [REDACTED] indicating that the applicant had been his patient since February 1982, and came regularly for physical examinations, is short on details. It did not give any specific appointment dates, nor indicate how often the "regular physical examinations" were scheduled. The statement is not supplemented by any medical records confirming the applicant's appointments with [REDACTED] from February 1982 through May 4, 1988. [REDACTED] did not identify any address for the applicant during the 1980s. In view of these substantive shortcomings, the statement has limited probative value. It is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The statement from [REDACTED], "manager" of The Bank of New York, appears to be fraudulent. Although the statement is on The Bank of New York letterhead, no address or branch is identified. [REDACTED] merely stated that the applicant had been "banking with us" since December 1981, but did not indicate whether the applicant resided in the United States during that period. In addition, the statement did not indicate the type of banking relationship the applicant had with the bank and the type of account(s) the applicant had with the bank. Furthermore, the statement is not supplemented by any other records from the applicant or the bank showing that the applicant maintained a relationship with the bank from December 1981 through May 4, 1988. In view of the possible fraud and the substantive deficiencies noted, the AAO finds that the statement from [REDACTED] has little probative value. It is not persuasive

evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that she entered the United States before January 1, 1982 and 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 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.