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FILE:



Office: GARDEN CITY

Date: DEC 22 2008

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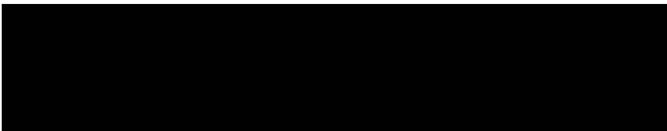
IN RE: Applicant:



APPLICATION:

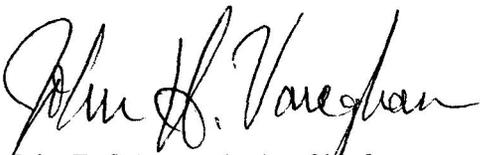
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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.

for 
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 Garden City, New York. 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 entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status through May 4, 1988.

On appeal the applicant asserts that he has submitted sufficient evidence to establish that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through May 4, 1988, but that the director did not give adequate weight to the evidence in the record.

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 Gambia who claims to have lived in the United States since December 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on May 6, 2002.

In a Notice of Intent to Deny (NOID) dated February 11, 2007, the director cited inconsistencies between the applicant’s testimony at his interview on July 26, 2004 and documentation in the record regarding the time frame of his arrival in the United States and his continuous unlawful residence in the country, as well as a lack of supporting documentation. The director indicated that the inconsistencies undermined the applicant’s credibility, and granted him 30 days to submit additional evidence.

The applicant did not submit any response to the NOID and on April 20, 2007, the director issued a Notice of Decision denying the application for the reasons stated in the NOID.

On appeal, the applicant asserts that the director did not properly consider the evidence of record. The applicant asserts that he has submitted sufficient credible evidence to establish that he resided in the United States continuously during the requisite period for LIFE legalization. The applicant 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 he 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 he has not.

The documentation submitted by the applicant in support of his claim to have arrived in the United States before January 1, 1982, and resided continuously in the country in an unlawful status during the requisite period for LIFE legalization consists of the following:

- A statement by [REDACTED] a public information official of Masjid Malcolm Shabazz in New York City, dated May 15, 1990.
- An affidavit from [REDACTED] stating that the applicant lived in his building located at [REDACTED], New York City, from December 1981 to May 1984.
- Four affidavits from two individuals attesting that the applicant resided in New York from December 1981 to May 1990.

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 file contains documentation that calls into question the veracity of the applicant's claim to have entered the United States in January 1981 and resided continuously in an unlawful status through the end of the 1980s. At his LIFE legalization interview on July 16, 2004, the applicant stated that he came to the United States in December 1981. On a Form I-687 (application for status as a temporary resident) filed in 1990, the applicant indicated that he last came to the United States in December 1981, departed the United States in February 1989, and returned to the United States in March 1989. The applicant did not indicate any other absence(s) from the United States in the 1980s. A copy of his expired Gambian passport, however, shows that the applicant was issued the passport in Gambia on September 19, 1988. The applicant has not provided any explanation as to how he could have obtained the passport in Gambia at a time he claims to have been physically present in the United States. Other information on the pages of the passport shows that the applicant applied for a visa at the United States Embassy in Banjul, Gambia, on October 4, 1988, was issued a non-immigrant (B-1/B-2) visa at the U.S. Embassy in

Banjul on March 2, 1989, and entered the United States through New York on March 22, 1989 as a visitor. This information on the passport undermines the credibility of the applicant's claim that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status up to 1990, except for one brief trip to Gambia in February and March 1989 lasting less than one month.

On the Form I-687, which the applicant filed in 1990, he listed the following residential addresses since December 1981:

- [REDACTED], in New York, New York, from December 1981 to May 1984;
- [REDACTED], in New York, New York, from May 1984 to June 1987; and
- [REDACTED], in Brooklyn, New York, from June 1987 to the present (1990).

On his Form G-325A (Biographic Information), dated April 24, 2002 and filed with Form I-485 on May 6, 2002, the applicant listed the following addresses in the 1980s:

- [REDACTED] in Brooklyn, New York, from December 1981 to April 1989; and
- [REDACTED], in Bronx, New York, from April 1989 to the present (April 2002).

Thus, in addition to the questions raised about the applicant's initial date of entry into the United States (December 1981 or March 22, 1989), and when his continuous residence began, the documentation from 1990 and 2002 contains completely contradictory information about the applicant's residential addresses during the 1980s.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period for LIFE legalization. For someone claiming to have lived in the United States since 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary or secondary evidence during the following seven years through May 4, 1988.

The letter from [REDACTED], of Masjid Malcolm Shabazz in New York City, does 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. The letter from [REDACTED], dated May 15, 1990, vaguely stated that the applicant was a member of the Muslim community and “has been here” since December 1981, but was not specific about the applicant’s date of membership, did not state where the applicant lived at any point in time between 1981 and 1988, did not indicate how and when [REDACTED] met the applicant, and did not state whether his information about the applicant was based on his personal knowledge, the mosque’s records, or hearsay. Since the letter did not comply with subparts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that the letter has little 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.

As for the affidavits in the record – dated in 1990 – from acquaintances who claim to have rented an apartment to, worked with, or otherwise known the applicant during the 1980s, all have minimalist or fill-in-the-blank formats with little personal input by the affiants. Considering the length of time they claim to have known the applicant – in each case since 1981 – the affiants provide remarkably little information about his life in the United States and their interaction with him over the years. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants’ personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the affidavits have little probative value. They are 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 he 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. 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.