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U.S. Citizenship
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FILE: [REDACTED]
MSC 03 249 60007

Office: NEW YORK

Date: **JUL 09 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: Self-represented

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 (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 resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, the applicant asserts that he has lived in the United States since 1981, and requests that his case be reconsidered.

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).

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 who claims to have lived in the United States since November 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on June 6, 2003. At that time the record included the following evidence of the applicant's residence in the United States during the 1980s, which had been submitted in October 1990 in support of an application for status as a temporary resident (Form I-687) and a form for determination of class membership in the *CSS v. Meese* class action lawsuit:¹

- Two affidavits by [REDACTED], a resident of New York City, both dated August 31, 1990, stating that he met the applicant at the Lenox Avenue market in 1981, that the applicant supported himself as a street vendor, and that the applicant resided from November 1981 to February 1989 at [REDACTED] and from March 1989 to the present (1990) at [REDACTED], in New York.
- A sworn statement from the manager of the Hotel Bryant in New York City, undated but evidently prepared in 1990 or early 1991, "verifying" that the applicant resided at the Hotel, [REDACTED], from November 1981 to February 1989.
- A letter from [REDACTED] on the letterhead of Air Afrique in New York, dated March 26, 1991, certifying that the applicant traveled from JFK Airport to Dakar, Senegal, aboard flight [REDACTED] on June 22, 1987.

On March 30, 2006, the director issued a Notice of Intent to Deny (NOID), indicating that the evidence of record was insufficient to establish the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The director noted that the affidavits from [REDACTED] did not appear credible or verifiable, and that the letter from the Hotel Bryant had an illegible signature, was unverifiable since the hotel is no longer in business, and resembled numerous letters submitted by other applicants, ostensibly from the Hotel Bryant, which appeared to be fraudulent. The applicant was granted 30 days to submit additional evidence.

¹ *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993)

In response to the NOID the applicant submitted a statement indicating that the Hotel Bryant had been sold years ago and that its new name was the Ameritania Hotel. The applicant also submitted one additional affidavit from [REDACTED], a resident of New York City, dated August 7, 2006, stating that he met the applicant at the corner of 54th Street and 5th Avenue, where he was a street vendor, in 1982.

In a Notice of Decision dated June 26, 2006, the director stated that the additional evidence did not overcome the grounds for denial, and denied the application for the reasons discussed in the NOID.

On appeal, the applicant reiterates his claim to have entered the United States through Canada in 1981 and to have lived in the country since then. No further documentation is submitted.

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 from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The applicant has no contemporary documentation from the 1980s demonstrating that he was residing in the United States at that time. The affidavits from Mr. [REDACTED] and Mr. [REDACTED] dating from 1990 and 2006, have minimalist or fill-in-the blank formats with little personal input from the affiants. They provide very few details about the applicant's life in the United States from the end of 1981 to 1988 and his interaction with the affiants during those years. Considering how long the affiants claim to have known the applicant, it is remarkable how little information they offered. Moreover, none of the affiants submitted any supporting evidence of their relationship to the applicant during the 1980s – such as photographs, letters, or other documentation. For the reasons discussed above, the affidavits do not represent persuasive evidence of the applicant's continuous residence in the United States during the requisite period for LIFE legalization.

With regard to the Hotel Bryant, the applicant is correct that its name has been changed to the Ameritania Hotel. The applicant has not addressed the question of fraud raised by the director, however, and the AAO agrees that the undated letter in the record, with an illegible signature from the “manager” who is not otherwise identified, appears suspect. Furthermore, no rental receipts, leases, or other documentation has been submitted by the applicant or the hotel to demonstrate that the applicant actually lived there at any time between 1981 and 1989. The AAO concludes that the letter from the Hotel Bryant is not credible evidence of the applicant's continuous residence in the United States during the requisite period for LIFE legalization.

Finally, the letter from Air Afrique, while it seems to confirm that the applicant flew from New York to Senegal in June 1987, does not show that the applicant was residing in the United States at that time, much less that he resided in the country before January 1, 1982. Accordingly, it too fails to demonstrate the applicant's continuous residence in the United States during the requisite period for LIFE legalization.

Given the lack of probative evidence in the record, the AAO determines that 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 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.