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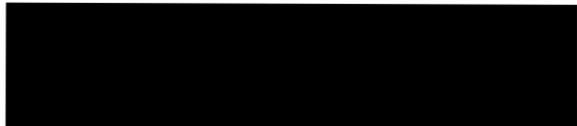
U.S. Department of Homeland Security  
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Washington, DC 20529



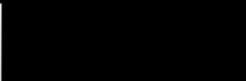
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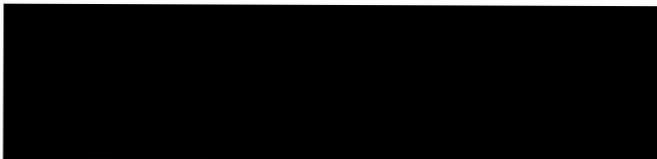
IN RE:

Applicant:



PETITION: 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 PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

A handwritten signature in black ink, appearing to read "D. Wiemann".

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, 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 failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel asserts that the director's conclusions in the denial were erroneous, and seeks to clarify the dates of the applicant's continuous residence in the United States.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – 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. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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).

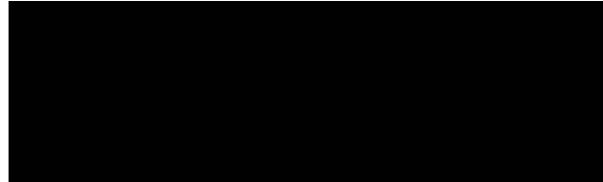
The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating 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 or 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).

In the affidavit for class membership, which he signed under penalty of perjury on October 5, 1990, the applicant stated that he first arrived in the United States on October 27, 1980, when he crossed the border without inspection. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury, the applicant claimed to live at the following addresses in the United States during the requisite period:

October 1980 to November 1980:  
November 1980 to December 1984:  
December 1984 to July 1985:  
September 1985 to January 1988:  
January 1988 to Present:



Regarding his employment history, the applicant claimed to work for [REDACTED]'s Auto Body from June 1984 to the present. He further claimed that he was a student at a technical university from 1981 until June 1984.

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

- (1) Affidavit dated May 20, 2005 from [REDACTED] claiming that he examined the applicant in his clinic on January 10, 1982 when he diagnosed the applicant with viral pneumonia.
- (2) Affidavit notarized on April 5, 2004 by [REDACTED] resident of the Masjid Alforuk located in Brooklyn, New York. Mr. [REDACTED] claims that he has known the applicant since December 1980 when the applicant began attending his mosque. He claims that the applicant stopped visiting the mosque in May 1981 because he "moved to another place."
- (3) Affidavit dated May 4, 1990 from [REDACTED] claiming that he knows the applicant resided in Lynwood, California from January 1985 to the present. He claims that the applicant is a friend of his from Sudan.

In the Notice of Intent to Deny (NOID) issued on May 18, 2005, the director stated that the applicant failed to establish that he had continuously resided in an unlawful status in the United States during the requisite period. The director noted that upon review of the applicant's file, it appears that he was a resident of Libya from late 1978 to 1985, thereby contradicting his claim that he first entered the United States in 1980. The director granted the applicant thirty (30) days to submit additional evidence to explain this inconsistency.

In a response dated June 16, 2005, counsel sought to clarify the applicant's residence history for the requisite period. He provided the following list:

1978 to 1980:	Libya
1980 to July 1982:	U.S.
July 1982 to August 1982:	Sudan
August 1982 to October 1985:	Libya
October 1985 to present:	U.S.

Counsel for the applicant further claimed that the applicant's extensive absence from the United States from 1982-1985 was the result of the loss of his passport, and claims that this is supported by a November 28, 1997 document from the Sudanese consulate which states that the applicant was issued an Emergency Travel Document for one trip to Sudan in July 1982 in lieu of his passport which was reported as lost. No further evidence was submitted.

In the Notice of Decision, dated August 13, 2006, the director denied the instant application. The director noted that in addition to the issues raised in the NOID, further discrepancies were noted when examining the applicant's Form I-539, Application for Asylum, on which he claimed to be a student in a high school in Khartoum, Sudan from 1980 to 1983. The director also noted that while the loss of the applicant's passport in 1982 was unfortunate, it does not permit the applicant to be absent from the United States for three years and still receive the benefit he is seeking. On appeal, counsel claims that the applicant graduated high school in 1979 and therefore was in Libya, not Sudan, at that time. He further claims that the applicant could not return promptly to the United States from Libya in 1982 because it took so long to get his new passport, and therefore concludes that the applicant's three-year absence from the United States was casual, innocent and brief due to the circumstances beyond his control.

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. The applicant submitted three affidavits as evidence to support his Form I-485 application. In addition, travel records and statements made under oath in separate proceedings support a finding that the applicant was not present in the United States during the requisite period as outlined by the regulations.

The AAO will first address the applicant's absence from the United States from August 1982 to October 1985. According to the regulation at 8 C.F.R. § 245a.15(c)(1), no single absence from the United States can exceed forty-five days without interrupting continuous residency. Therefore, even if the applicant could prove that he entered the United States prior to January 1, 1982, he would have been absent from the United States for over three years, thereby easily exceeding the 45 day limit for a single absence. Since there is no evidence to refute the length of the applicant's absence, and the only explanation regarding the length of the applicant's absence is that he had difficulty obtaining a passport, the AAO must conclude that continuous residency during the requisite period has not been established.

Although the applicant's absence in excess of three years renders him ineligible for permanent resident status for the reason set forth above, the AAO will address the other evidence submitted in support of his eligibility. The three affidavits submitted in support of the application provide minimal evidence and are not probative. The first affidavit, executed by [REDACTED] claims that the applicant received treatment for viral pneumonia from the doctor on or about January 10, 1982. The affiant provides no additional details nor does he include medical records to support his claim. Furthermore, the statement, if verified, would prove only that the applicant was present in the United States on July 10, 1982, only one day out of the requisite period.

The affidavit by [REDACTED] claims that the applicant resided in Lynwood, California from January 1985 to the present. However, the applicant and counsel both claim that the applicant was in Libya until October 1985. Moreover, the applicant claims on his Form I-687 to have resided in Lynwood, California

from December 1984 to July 1985, contradicting the claims of the affiant and of the applicant himself, who, through counsel, claims he was in Libya until October 1985. These three claims greatly differ, and no evidence or explanation has been provided for clarification. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Finally, the affidavit by [REDACTED] of Masjid Alforuk, the applicant's mosque, is likewise insufficient. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides that attestations of churches are acceptable evidence to support an applicant's claim of residency. However, the regulation requires that such attestations identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address or addresses where the applicant resided during membership; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and establish the origin of the information being attested to. *See* 8 C.F.R. § 245a.2(d)(3)(v)(A)-(G).

In this matter, the statement from the alleged president of the applicant's mosque omits many of these requirements. It does not state the address or addresses where the applicant resided during membership. In addition, it is not written on church letterhead nor does it include the seal of the organization impressed on the letter. Moreover, it does not establish how the author knows the applicant and fails to establish the origin of the information being attested to. Finally, it is noted that on his Form I-687, the applicant contends that he only resided in the State of New York for one month, from October to November 1980. Therefore, [REDACTED]'s claim that he joined the mosque, located in Brooklyn, in December 1980 directly contradicts another statement provided by the applicant under oath. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime an application includes numerous errors and discrepancies, and the applicant fails to resolve those errors and discrepancies after Citizenship and Immigration Services (CIS) provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the applicant's assertions. As stated above, doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the applicant's case is not credible. This, coupled with his extensive absence from the United States, render him ineligible for permanent resident status under Section 1104 of the LIFE Act.

It is noted that on September 26, 2002, the applicant pled guilty to PL 215.50, Criminal Contempt in the Second Degree (a Class A Misdemeanor), and was sentenced to one year conditional discharge. (Docket No. [REDACTED]). On July 6, 2001, the applicant pled guilty to PG 215.50, Criminal Contempt in the Second Degree (a Class A Misdemeanor), and was sentenced to sixty days imprisonment and an order of protection was issued for three years. (Docket No. [REDACTED]). On the same date, the applicant was

also found guilty of TFG 240.26, Harassment in the Second Degree (a violation) and was sentenced to fifteen days imprisonment and a one-year order of protection was issued. (Docket [REDACTED]). On March 23, 2001, the applicant pled guilty to 215.50, Criminal Contempt in the Second Degree (a Class A Misdemeanor), and was sentenced to one year conditional discharge and an order of protection was issued for one year. (Docket No. [REDACTED]) On February 2, 2004, the applicant pled guilty to PL 240.20, Disorderly Conduct (a violation), and was fined. (Docket No. [REDACTED]). On December 17, 1994, the applicant pled guilty to VTL511.2, Aggravated Unlicensed Operation in the 2nd Degree (a Misdemeanor) and was sentenced to thirty days in prison and fined \$500.00. (Docket No. [REDACTED]). All sentences were issued by the Criminal Court of the City of New York, County of Kings.

The regulations at 8 C.F.R. § 245a.10(d)(1) provides in pertinent part that an eligible alien may adjust to legal permanent resident status under LIFE legalization if he or she “has not been convicted of any felony or of three or more misdemeanors committed in the United States.” Since the applicant has been convicted of three misdemeanors, he is further ineligible to adjust to permanent resident status.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility