

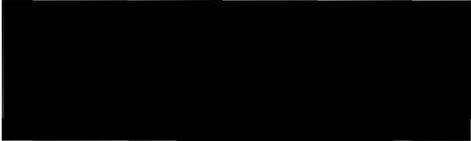
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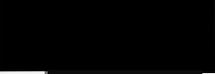


U.S. Citizenship  
and Immigration  
Services

L2



FILE:



Office: NEW YORK Date:

**JUN 09 2008**

MSC 02 079 61449

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. 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.

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, Los Angeles, 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 for the applicant asserts that sufficient evidence in support of the applicant's eligibility was submitted, and contends that the director's decision was arbitrary and constituted an abuse of discretion. No new evidence is submitted on appeal.

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).

On his affidavit for class membership, which he signed under penalty of perjury on May 18, 1990, the applicant claimed that he first entered the United States in July 1981, when he crossed the border without inspection. The record contains two Forms I-687, Application for Status as a Temporary Resident, both of which the applicant signed under penalty of perjury on May 17, 1990. On the first Form I-687, the applicant claimed to reside at the following addresses during the requisite period:

July 1981 to June 1986:  
July 1984 to July 1987:  
July 1987 to Present:

[REDACTED]

On the second Form I-687, the applicant claims to have the following address history:

July 1981 to July 1987:  
July 1987 to present:

[REDACTED]

The discrepancies with regard to these differing claims of addresses during the requisite period has not been clarified. Moreover, it is noted that the overlap in his claimed residences at St. John's Place and West 54<sup>th</sup> Street has not been explained.

In addition, the applicant claimed in section 36 of both Forms I-687 that he has been self-employed as a street peddler since July 1981.

In his service interview on August 9, 2004, the applicant stated that he first entered the United States in July 1981, but had no documentary proof of entry. He claimed to have visited Senegal in 1982 by traveling on someone else's password. Regarding his address history, the applicant claimed that he resided at the Hotel Bryant, located at [REDACTED] from 1981 to 1987. He claimed to subsequently move to the Mansfield Hotel at [REDACTED] where he resided from 1987 to 1989.

In support of his presence in the United States during the requisite period, the applicant submitted the following documents:

1. Letter dated January 11, 1990 from [REDACTED] allegedly executed by [REDACTED] Public Information. The letter claims that the applicant is a member of the Muslim Community and has been a member since August 1981. It claims that the applicant attends Friday [REDACTED] Services and other Prayer Services.
2. Letter dated February 13, 1990 from a clerk at the Bryant Hotel, New York, claiming that the applicant resided there from July 1984 to July 1987. It claims that he roomed with a friend who paid the rent. There is no additional information, and the address of the premises is identified as [REDACTED].
3. Affidavit dated May 17, 1990 by [REDACTED] claiming that he knows that the applicant has resided in Manhattan from July 1981 to the present. Regarding his acquaintance with the applicant, he states, "We know us through the street buying watches."

4. Notarized letter dated December 8, 1993 by [REDACTED], claiming that he met the applicant in the summer of 1981. He claims that he drove the applicant to John F. Kennedy International Airport in July 1987, when the applicant took an Air Afrique flight to Senegal.
5. Undated letter by [REDACTED], notarized on December 13, 1993. [REDACTED] claims that she has known the applicant since 1987 and that he is an honest and decent person.

In the Notice of Intent to Deny (NOID), dated July 26, 2006, the director stated that the applicant failed to submit evidence demonstrating his continuous unlawful residence in the United States during the requisite period. Specifically, the director noted that the documentary evidence submitted by the petitioner had been unverifiable, and thus called into question the veracity of the applicant's claims of eligibility. The director granted the applicant thirty (30) days to submit additional evidence to support the application, but the applicant failed to respond. In the Notice of Decision, dated September 6, 2006, the director denied the instant application based on the reasons stated in the NOID.

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 five documents submitted in support of his application contradict claims he made under oath in his interview and on his Forms I-687. Moreover, independent attempts by Citizenship and Immigration Services (CIS) to verify the veracity of the documents submitted was unsuccessful. Here, the applicant has failed to meet this burden.

The first issue to address is the inconsistent history of residences provided by the applicant. The applicant has made no attempt to explain why he lists conflicting addresses for the same and overlapping periods of time during the period from before January 1, 1982 through May 4, 1988. For example, on one Form I-687, the applicant claims to have resided at [REDACTED] from July 1981 to June 1984 and again from July 1987 to the present. On the second Form I-687, he does not list this address in his history, and instead claims to have resided at [REDACTED] from July 1981 to July 1987, and thereafter at [REDACTED]. In his service interview, the applicant claimed to reside at [REDACTED] but claimed to thereafter reside at [REDACTED] 1987 to 1989, directly contradicting the claim on his Forms I-687 that he resided at [REDACTED] and/or 122 [REDACTED] of July 1987. The letter from the Bryant Hotel, in support of his residence at 230 [REDACTED] claims that he resided there from July 1984 to July 1987, not July 1981 to July 1987 as claimed elsewhere. 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). 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. *Id.* at 591.

An additional issue to address is the fact that attempts by CIS to independently verify the statements contained in the submitted documentation were unsuccessful. For example, the letter from [REDACTED]

allegedly executed by [REDACTED] Public Information, cannot be verified. When contacted by telephone, the [REDACTED] claimed that [REDACTED] has not been at the [REDACTED] for over ten years, and therefore the statement could not be authenticated.

Even if the document could be authenticated, it falls short of the regulatory requirements. 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 applicant's alleged mosque, signed by someone with the title of "Public Information," omits most of these requirements. It does not show the applicant's inclusive dates of membership nor does it state the address or addresses where the applicant resided during membership. In addition, it is unclear whether [REDACTED] was an actual official of the organization. Finally, it does not establish how the author knows the applicant and fails to establish the origin of the information being attested to. This document, therefore, will be afforded minimal evidentiary weight.

In addition, the letter from the Bryant Hotel also could not be verified. When CIS attempted to contact the hotel, it was discovered that the hotel was no longer in business and therefore the information contained therein could not be verified. Nevertheless, the fact remains that the statements claimed therein contradict many other claims of residence during the requisite period; therefore, even if the document had been authenticated, it would still contradict the applicant's own statements under oath.

Finally, the letters and affidavits from [REDACTED] are insufficient to meet the applicant's burden of proof in these proceedings. While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. *See* 8 C.F.R. § 245a.2(d)(3)(v). The affidavits of the three individuals named above omit critical information, such as the address(es) at which they knew the applicant, the basis for their acquaintance with the applicant, and the origin of the information being attested to. In addition, CIS attempts to contact Mr. [REDACTED] who claims he knew the applicant from working as a street vendor, were unsuccessful since incorrect contact information for the affiant was provided.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8

C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification.

Finally, it should be noted that significant discrepancies exist between the claims made by the applicant in the instant application and in his Form I-589, Application for Asylum and Withholding of Deportation, executed on July 5, 1995. On the supplement to Form I-589, the applicant provides his educational background. The applicant claims that he attended College Charles Wanga in Senegal from 1979 to 1982, and thereafter attended the Universite D'Abijan, located in Ivory Coast, from 1982 to 1984. These claims directly contradict the applicant's claims in the instant application where he states that he first entered the United States in 1981. According to the instant application, the applicant worked in the United States as a street peddler since 1981, and the applicant provides his U.S. address during this time. There is no explanation with regard to these clear discrepancies, nor has the applicant provided any evidence to clarify these inconsistencies. As previously stated, 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. at 591-92. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Given the applicant's reliance upon documents with minimal probative value, his failure to supplement the record with probative evidence when afforded the opportunity, and the unresolved inconsistencies regarding his presence in the United States and Africa during the early part of the requisite period, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

In conclusion, the applicant has failed to establish continuous unlawful residence from before January 1, 1982 through May 4, 1988 as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

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