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U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]
MSC 01 361 60888

Office: NEW YORK

Date: JUN 16 2008

IN RE: Applicant:

[REDACTED]

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:

[REDACTED]

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 been residing in the United States since before January 1, 1982, and that the documentation previously submitted establishes this fact. The applicant 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).

“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 Senegal who claims to have lived in the United States since May 1980, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on September 26, 2001. At that time the record contained the following evidence of the applicant’s residence and presence in the United States during the 1980s:

A series of affidavits prepared by acquaintances of the applicant’s in New York City in October and November 1988, who claim to have known the applicant since 1980 or 1981, one of whom stated that he shared the same apartment with the applicant since then, and the others of whom stated that the applicant was a self-employed vendor and tailor during that time period.

A letter from a “public information” representative of Masjid Malcolm Shabazz, a Muslim organization in New York City, dated October 19, 1988, stating that the applicant had been a member of the Muslim community since March 1981, attending various prayer services.

A series of earnings statements from General Drapery Services, Inc. in New York City, dated between August 1987 and September 1988, identifying the employee as [REDACTED] or [REDACTED]

A time clock record in the name of [REDACTED] at an unidentified business located in Brooklyn, New York, for the week ending February 19, 1988.

On June 22, 2006, the director issued a Notice of Intent to Deny (NOID), citing the applicant's testimony at his interview for LIFE legalization on July 18, 2002, and travel information gleaned from his passport, as evidence that there were breaks in the applicant's U.S. residence during the 1980s that exceeded the 45-day maximum prescribed in the regulations, without any evidence that emergent reasons prevented his return to the United States within the allowed time period. The director also indicated that the affidavits in the record lacked sufficient substance to establish the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence that he resided continuously in the United States during the statutory period required for legalization under the LIFE Act.

In response to the NOID the applicant contended that he was never absent from the United States for more than 45 days from the time he first entered the United States without inspection in May 1980 except for one occasion – from January to April 1987 – when he went to Senegal on a business trip and stayed longer than originally planned because his mother got seriously ill.

On July 31, 2006, the director denied the application on the grounds that the applicant's response to the NOID failed to overcome the grounds for denial. The director determined that the applicant failed to establish by a preponderance of the evidence that he took up residence in the United States before January 1, 1982, and maintained continuous unlawful residence in the United States from then through May 4, 1988, as required to be eligible for legalization under the LIFE Act.

On appeal, the applicant reiterates his contention that he has resided in the United States continuously since before January 1, 1982, and that the evidence of record establishes his eligibility for LIFE legalization. The AAO does not agree.

The earliest contemporary documentation from the 1980s of the applicant's residence in the United States is the series of earnings statements from General Drapery Services, Inc. beginning in August 1987 (though the applicant has not explained why his last name appears as [REDACTED] or [REDACTED] on all of the statements). The photocopied passport pages in the record show that the applicant was issued a passport in Senegal on July 9, 1985, was issued a B-1/B-2 nonimmigrant visa by the U.S. Embassy in Abidjan, Senegal, on January 23, 1987, and entered the United States with that visa on April 18, 1987. There is no persuasive evidence of any earlier entry into the United States.

The series of affidavits from friends of the applicant, dating from October and November 1988, provide little information from the affiants about the applicant's life in the United States during the 1980s and their relationship to him during those years. The affidavits have minimalist and/or fill-in-the blank formats, employ similar language, and clearly have limited personal input by the affiants. While some of the affiants identify a New York City address for the applicant, and most describe him vaguely as a vendor and tailor, those were the only details provided by the affiants. For the amount of time they claimed to have known the applicant, the affiants should have been able to furnish considerably more information about him. Furthermore, none of the affiants submitted any documentary evidence – such as photographs, letters, and the like – showing that they had a personal relationship with the applicant in the United States. The same types of shortcomings apply to the letter from the Muslim community official. He did not indicate whether the information about the affiant was taken from the organization's records or was based on his personal knowledge over the years, and he provided no information about the applicant except for the bare statement that he had been a member of the organization and attended services since 1981. For the reasons discussed above, the affidavits/letters in the record have little evidentiary weight.

Thus, the evidence of record does not demonstrate that the applicant has resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

Even if the AAO were to accept the applicant's claim that he was in the United States before his first recorded entry on April 18, 1987, the applicant has acknowledged at least one absence from the United States of more than 45 days during the statutory period for LIFE legalization. According to the applicant, he traveled to Senegal for a vacation in January 1987, and stayed longer than he intended because his mother became ill, which prevented his return to the United States until April 18, 2007. The applicant has not submitted any medical records, however, to corroborate his claim that his mother was ill. Nor has he indicated the nature of her illness, when it began, and exactly why it prevented his return to the United States for three months.

It is undisputed that a three-month absence from the United States exceeds the 45-day maximum for a single absence prescribed in the regulation at 8 C.F.R. § 245a.15(c)(1). An absence of such duration interrupts an alien's continuous residence in the United States unless he or she can show that a timely return to the United States could not be accomplished due to emergent reasons. While the term "emergent reasons" is not defined in the regulations, there is some pertinent case law. In *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), the Board of Immigration Appeals held that *emergent* means "coming unexpectedly into being."

Considering the lack of evidence from the applicant about his alleged trip from the United States to Senegal in January 1987 and his extended stay until April 1987, the applicant has not shown that emergent reasons, within the meaning of 8 C.F.R. § 245a.15(c)(1) and *Matter of C-*, prevented his return to the United States within the 45-day period allowed in the regulation. Assuming *arguendo* that such a trip was made by the applicant, the three-month absence from the United States would have interrupted his continuous residence in the United States.

Based on the foregoing analysis, the AAO concludes 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 and 8 C.F.R. § 245a.15(c)(1). 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.