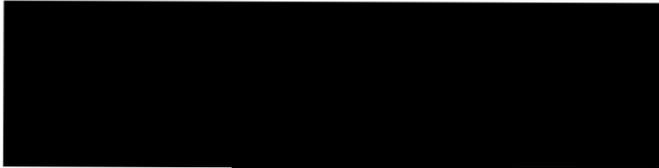


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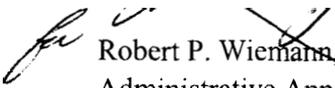


PETITION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF 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 submit additional evidence of his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as requested in a Notice of Intent to Deny (NOID) and therefore failed to establish his eligibility for legalization under the LIFE Act.

On appeal, the applicant asserts that he did not receive the NOID referenced in the decision and was therefore unaware of the need to submit additional evidence. The applicant claims that the evidence previously submitted establishes his eligibility for LIFE legalization.

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.”

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. *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 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).

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, filed his application for permanent resident status under the LIFE Act (Form I-485) on April 30, 2002.

In a Notice of Intent to Deny, dated March 10, 2006, the director referred to the applicant’s testimony at his interview for LIFE legalization on March 22, 2004, and the evidence submitted at that time of his residence in the United States during the 1980s. The director noted that the applicant claimed to have entered the United States in 1981, but that little credible evidence thereof had been submitted. The director indicated that the documentation of record did not show that the applicant had taken up residence in the United States before January 1, 1982, as required to be eligible for legalization under the LIFE Act. Furthermore, the applicant’s passport showed numerous entries into and departures from Dakar, Senegal, in the years 1984-1988, entries into New York in the years 1986, 1987, and 1988, and a trip to Spain from June 17 to September 2, 1983. The director indicated that the foregoing travel represented a break in the applicant’s continuous residence in the United States since the trip to Spain exceeded the 45-day maximum for a single absence from the United States with no evidence that emergent reasons prevented the applicant from returning to the United States within 45 days,¹ and the sum total of the applicant’s departures from the United States during the years 1983 to 1988 appeared to exceed 180 days. As such, the applicant did not satisfy the requirement of continuous residence in the United States from before January 1, 1982 through May 4, 1988, as prescribed in 8 C.F.R. § 245a.15(c)(1). The applicant was granted 30 days to submit additional evidence. No response was received from the applicant.

¹ Although the term “emergent reasons” is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that *emergent* means “coming unexpectedly into being.”

On May 1, 2006, the director issued a Notice of Decision denying the application on the ground that no additional evidence had been submitted by the applicant to overcome the grounds for denial set forth in the NOID.

The applicant filed a timely appeal on May 25, 2006, asserting that he did not receive the NOID dated March 10, 2006, was unaware of the evidentiary shortcomings in his case, and would have responded to the NOID. According to the applicant, though, the documentation previously submitted and the testimony he gave at his LIFE legalization interview in 2004 establish his eligibility for LIFE legalization.

The AAO notes that the applicant's address has not changed since his LIFE application was filed in 2002, and every communication from the New York District Office to the applicant up to 2006 was sent to that address. Both the NOID and the Notice of Decision were sent to the applicant's correct address. The fact that the applicant's appeal was timely filed shows that he did receive the Notice of Decision, and there is no reason to conclude that he did not also receive the NOID a few weeks earlier. Therefore, the applicant's failure to respond to the NOID will not be excused.

The AAO concurs with the director that the applicant has failed to establish that he entered the United States in 1981, as he claims, and 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 section 1104 of 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.