

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



L2

FILE:

MSC 02 165 60167

Office: NEW YORK

Date:

MAY 30 2008

IN RE: Applicant:



APPLICATION:

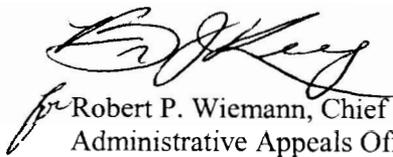
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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.


for 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, 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, the applicant states that the director erred in denying the application. The applicant submits additional evidence, 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 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.

In the Notice of Intent to Deny (NOID), dated April 1, 2006, the director stated that the applicant failed to submit evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that the applicant failed to establish his entry date, and that the translation of the applicant's diploma by the Embassy of Morocco in Senegal indicates that the applicant was in Dakar, Senegal, in 1987. However, the applicant indicated on his original Legalization application signed on December 5, 1991, that his only absence from the United States since his claimed entry in 1981, was a brief trip to Canada in January 1988. The director granted the applicant thirty (30) days to submit additional evidence.

The record reflects that the applicant's response to the NOID comprised of a statement to the effect that due to the long period of time since 1981, he is unable to obtain evidence to establish his entry, because in 1981 he paid cash to be transported to the United States from Canada without inspection; and, regarding the translation of his diploma, the applicant states that while he was in the United States he sent a letter to his family in Dakar, Senegal, to have the diploma translated at the Embassy of Morocco in Dakar. In the Notice of Decision, dated July 22, 2006, the director denied the instant application based on the reasons stated in the NOID.

On appeal, the applicant restates that he was in the United States in 1987 when his diploma was translated by the Embassy of Morocco in Senegal, and that his family in Senegal helped obtain the translation. With his appeal, the applicant submits: a letter from [REDACTED], dated August 17, 2006. Ms. [REDACTED] states that she has known the applicant since around the Christmas holiday season in 1981, and that she sees the applicant from time to time; a letter from [REDACTED] dated August 19, 2006. Ms. [REDACTED] also states that she has known the applicant since around the Christmas holiday season in 1981, and that she sees the applicant from time to time; a letter from [REDACTED] Imam of The Mosque of Islamic Brotherhood, Inc., dated March 4, 2004, stating that the applicant has been a frequent worshipper at affiliated Harlem mosques since 1981; a letter by [REDACTED], Public Information officer of the Masjid Malcolm Shabazz mosque, dated December 4, 1991, stating that the applicant has been a member of the Muslim Community since December 1981, and that the applicant attends prayer at the mosque; a form affidavit from [REDACTED], dated November 27, 1991, stating that she has known the applicant since December 1981; a form affidavit from [REDACTED], dated November 26, 1991, stating that she has known the applicant since December 1981; a letter from [REDACTED], dated December 5, 1991, stating that he

has known the applicant since 1981; and, a letter from [REDACTED] Manager of Jin Trading Company, Inc., stating that the applicant has been a regular customer since 1981.

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.

It is noted that although the applicant claims that he first entered the United States in December 1981, and that he left the United States on a brief trip to Canada in January 1988 and returned to the United States in January 1988, the record reveals that the U.S. Consulate in Dakar, Senegal issued a U.S. Visa to the applicant on August 28, 1991. It is noted that in order to receive such a visa, the applicant had to convince a U.S. consular official that he resided and worked in Senegal. Therefore, the applicant cannot establish that he resided in the United States in an unlawful status since January 1, 1982 through May 4, 1988.

The applicant failed to submit sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. The discrepancies in the applicant's claimed entry date, and the record of evidence cast considerable doubt on the applicant's claim that he resided in the United States since 1981. The applicant has submitted affidavits from individuals, and asserts that these affidavits establish the requisite continuous residence in the United States. However, contrary to the applicant's assertion, the issuance of a U.S. visa, indicates that the applicant resided and worked in Senegal, therefore, these affidavits are questionable. In addition, the issuance of the applicant's U.S. visa is inconsistent with his claim that he resided in the United States in an unlawful status since 1981. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence 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.