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U.S. Citizenship
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Services

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[REDACTED]

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FILE:

[REDACTED]
MSC 02 225 63965

Office: NEW YORK

Date:

MAY 30 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. 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, 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 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.

In the Notice of Intent to Deny (NOID), dated August 15, 2005, 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 although the applicant's passport was issued in Gabon on May 25, 1988, the applicant testified in a sworn statement that he first entered the United States in October 1981, he departed the United States in August 1988 and visited Gabon on a business trip, and re-entered the United States with a B1/B2 visa on September 8, 1982. The director granted the applicant thirty (30) days to submit additional evidence.

In her denial notice, the director noted that the applicant responded to the NOID; however, in his rebuttal the applicant provided no explanation as to how he obtained the passport that was issued in Gabon on May 25, 1988. In the Notice of Decision, dated June 17, 2006, the director denied the instant application based on the reasons stated in the NOID.

On appeal, the applicant (who is a native and citizen of Senegal) states that his Senegalese passport was issued in Gabon in May 1988 because the Senegalese consulate in New York did not issue passports. Therefore, in May 1988 his passport documents were sent to his brother who lived in Gabon for processing by the Senegalese Embassy in Gabon. Then, in August 1988, he departed the United States to Gabon where he obtained a B-1 non-immigrant visa.

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 two letters of employment, a reference letter from an individual, and a copy of a page of an apartment lease, as evidence to support his Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

Employment Letters

The applicant submitted a letter of employment by [REDACTED] Manager of Gasa Supermarket, located at 2019 7th Avenue, New York, NY 10027. Mr. [REDACTED] states in his February 12, 1990 letter that the applicant had been employed as a stock boy from 1984 to 1989.

The applicant also submitted a letter of employment from [REDACTED] Manager of Ground Round Restaurant, located at 1623 Central Avenue, Yonkers, New York, NY. [REDACTED] states in his January 30, 1990 letter that the applicant had been employed as a dishwasher from 1981 to 1984.

However, [REDACTED] and [REDACTED] failed to provide the applicant's address at the time of employment, show periods of layoff, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i). [REDACTED] also failed to specify the date or month in 1984 when the claimed employment commenced.

Affidavits

The applicant submitted a sworn form affidavit from [REDACTED] dated March 26, 1990, attesting to having known the applicant from December 1981. [REDACTED] states that the applicant was a regular customer at a store where she worked. However, [REDACTED] does not state how she dates her acquaintance with the applicant or whether the applicant has been a continuous resident of the United States since that time. The applicant also submitted a sworn form affidavit by [REDACTED] dated March 26, 1990, stating that the applicant lived with him at [REDACTED] New York, from March 1983 to September 1989. However, [REDACTED] also did not state whether he has known the applicant from January 1, 1982, or whether the applicant has been a continuous resident of the United States since that time.

Although the applicant has submitted two employment letters and two affidavits in support of his application, the applicant has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. None of the affiants indicated how they dated their acquaintance with the applicant, how they met the applicant or how frequently they saw the applicant. 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.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Furthermore, as noted by the director, the applicant stated in a Record of Sworn Statement, dated February 16, 2006, conducted in connection with his application, that he first entered the United States in 1981, and he left the United States in August 1988 for one month. However, as also noted by the director, the record reflects that the applicant's passport was issued in Gabon on May 25, 1988, the U.S. Consulate in Gabon issued a U.S. non-immigrant visa to the applicant on August 4,

1988, and he was admitted at New York on September 8, 1988. It is noted that in order to receive the visa in May 1988, the applicant had to convince a U.S. consular official that he resided and worked outside of the United States. Therefore, the applicant cannot establish that he resided in the United States in an unlawful status since January 1, 1982 through May 4, 1988.

As determined by the director, 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. As also noted by the director, 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 letters from three affiants in an attempt to establish the requisite continuous residence in the United States. However, given the evidence of record in the form of the applicant's passport and the issuance of his U.S. visa, which indicates that the applicant lived and worked outside the United States during the requisite period, these affidavits are questionable. In addition, as noted above, 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.