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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

MSC 02 088 60094

Office: NEW YORK

Date:

OCT 28 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:

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 Director, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had a prolonged absence from the United States from January 1982 to August 1983, and, therefore he failed to establish that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel for the applicant states that the applicant has submitted sufficient evidence to establish his eligibility. Counsel does not submit 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).

“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.

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 December 17, 2005, the director stated that the applicant failed to submit sufficient evidence demonstrating that he entered the United States before January 1, 1982, and of his continuous unlawful residence and his physical presence in the United States, during the requisite period. The director noted that during his interview on April 29, 2005, the applicant stated that he first entered the United States in August or September 1981; that he had departed the United States for Algeria in January 1982; and, he had resided in Algeria from January 1982 until August 1983. The director determined, therefore, that the applicant had exceeded the forty-five (45) day limit for a single absence from the United States based on the applicant’s testimony at his interview. For these reasons, the director concluded that the applicant could not establish his continuous residence during the requisite period. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated October 19, 2006, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant’s response to the NOID failed to overcome the reasons for denial as it consisted only of his statement flatly denying ever departing the United States for Algeria since entering the United States in September 1981.

The issue in this proceeding is whether the applicant has had prolonged absence from the United States that exceeded *forty-five (45) days*, and the aggregate of all absences has exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988. The applicant submitted letters, affidavits, and other documents as evidence to support his Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

The evidence of record indicates that the applicant was outside the United States beyond the period of time allowed by regulation. Based on his own statement during his interview on April 29, 2005, the

applicant stated that he had departed the United States for Algeria in January 1982, and he had resided in Algeria from January 1982 until August 1983. Also, the applicant submitted a Form G-325A in connection with a Petition for Alien Relative, Form I-130, filed on July 19, 1985, which indicates that the applicant resided in Algiers, Algeria, until July 1983. The applicant's absence from the United States from January 1982 to July 1983 constitutes a break in his continuous residence.

The applicant does not assert that his absence was for emergent reasons. Although this term is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means "coming unexpectedly into being." The applicant does not submit any evidence to establish that his prolonged absence was of an emergent reason. As discussed above the applicant's assertion that he had not been absent from the United States from January 1982 to July 1983 is without merit. Therefore, the applicant has failed to establish that his prolonged absence from the U.S. was due to an "emergent reason."

In addition, it is noted the record reflects that the applicant also stated that he entered the United States in September 1984 with a G-1 Visa, and he had been employed with the Mission of Algeria to the United Nations until April 1985. The record indicates that the applicant was issued a G-1 visa, in Mexico, on September 6, 1984, and was admitted, at New York City, as a G-1 non-immigrant on September 10, 1984.

The applicant has submitted affidavits and other evidence in an attempt to establish his continuous residence. The evidence of record, however, is clear that the applicant cannot establish the requisite continuous residence. The applicant's claim that he has resided continuously in an unlawful status since prior to January 1, 1982, is not credible. Contrary to the applicant's claim, as discussed above, the record points to the applicant's absence from the United States from January 1982 until July 1983, as well as for another period prior to September 6, 1984. By his own admission the applicant was admitted into the United States on September 10, 1984 as a G-1 non-immigrant, and worked in that status with the Algerian mission to the United Nations, in New York, from September 1984 until April 1985. These discrepancies casts doubt on whether the applicant has been in the United States in unlawful status since prior to January 1, 1982 as he claims. 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 his testimony and 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 throughout 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