U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEW YORK Date: APR 01 2008

MSC 02 081 60678

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: 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 [or Records] 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 in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988.

On appeal the applicant asserts that he has resided in the United States continuously since 1981, and 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).

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, filed his application for permanent resident status under the LIFE Act (Form I-485) on December 20, 2001. In a Notice of Intent to Deny (NOID), dated February 19, 2004, the director reviewed the applicant's claim that he entered the United States in 1981 and resided in the Hotel Bryant at 230 West 54th Street, New York City, until 1988. The director indicated that the letter submitted by the applicant from the Hotel Bryant appeared to be fraudulent and that there was no primary evidence in the record – such as rent receipts, utility bills, or telephone bills – to substantiate the applicant's claim to have resided at the hotel. The applicant was granted 30 days to submit additional evidence.

The applicant responded to the NOID with some additional documentation, but none of it pertained to the time period 1981-1988 except for an affidavit from the applicant's former wife, [redacted], who states that she met the applicant on or about April 15, 1985 in New York City.

In the Notice of Decision dated April 4, 2006, the director denied the application on the ground that the applicant had failed to submit any additional documentation to overcome the reasons for denial as stated in the NOID.

On appeal the applicant reiterates his contention that he has resided in the United States since 1981, asserts that the documentation he submitted supports his claim, and asks that the director's decision be reconsidered.

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 from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The AAO agrees with the director that the letter from the Hotel Bryant referenced in the NOID – stating that the applicant resided there from December 1981 to July 1989 – is fraudulent. The letter was not submitted as an original document, but rather as a photocopy of multiple parts pieced together with at least four different font types. Doubt cast on any aspect of the applicant's evidence reflects on the reliability of the petitioner's remaining evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The only other evidence of the applicant's residence in the United States during the requisite years from 1981 to 1988 are a letter from a public information official from a Muslim community organization in New York City, dated June 18, 1990, stating that the applicant had

been a member since December 1981 and attended various prayer services, and three affidavits from residents of New York, dating from June 1990 to June 1991, stating that the applicant resided at 230 W. 54th Street in New York (the address of the Bryant Hotel) from December 1981 to July 1989.

As previously indicated, evidence must be evaluated not only by its quantity, but also by its quality. The three affidavits are identical fill-in-the blank formats with little input from the affiants about how and when they met applicant and their relationship to him during the 1980s. The public information official from the Muslim community organization did not indicate that he had any personal knowledge of the applicant's attendance since 1981, or otherwise identify the source of his information. None of the foregoing documents was supported by any documentation of the author's own identity or presence in the United States from 1981 onward. The absence of detailed documentation to corroborate the applicant's claim of continuous residence and continuous physical presence for the requisite time periods, together with the fraudulent letter on the Hotel Bryant letterhead, fatally undermines the credibility of the applicant's claim.

Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish his continuous residence in an unlawful status in the United States 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 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.