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

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

L 2

FILE: [redacted] Office: NEW YORK Date: APR 17 2008

MSC 02 204 62728

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 office that originally decided your case. If your appeal was sustained, or if your case 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 District Director, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application. The director concluded that the applicant entered the United States on February 7, 1989, at John F. Kennedy Airport, New York, and was admitted as a nonimmigrant visitor for business. The director found that the applicant had submitted insufficient evidence to support his assertion that he had continuously resided and had been continuously physically present in the United States prior to that date, during the requisite periods.

On appeal, counsel for the applicant asserts that the director's decision was arbitrary considering the peculiar facts and circumstances of this case. Counsel further asserts that the director's decision is an abuse of discretion not supported by the documentation and testimony presented by the applicant. Counsel asserts that all of the applicant's testimony and documentation should be reconsidered.

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.

The record reflects that on April 22, 2002, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On November 3, 2004, the applicant appeared for an interview based on his application. During his interview, he told the interviewing officer that he first entered the United States without inspection in 1981 through the U.S./Canada border.

On May 15, 2005, the director sent the applicant a Notice of Intent to Deny (NOID). The director noted that the applicant's testimony during his interview lacked credibility. During the interview, the interviewing officer explained to the applicant that records showed that he entered the United States as a B-1 visitor for business on February 7, 1989 and that there was no evidence that the applicant had been physically present or resided here prior to that date. When asked when he had first entered the United States, the applicant stated that he entered without inspection from Canada sometime in 1981. He was unable to provide sufficient detail about how he traveled from Guinea to Canada and then from Canada to the United States. When asked if he had any documentation to prove that he had resided in the United States prior to January 1, 1982, and through May 4, 1988, the applicant replied that he did not. The director noted that the applicant had not established that he was admissible to the United States. The director also noted that the applicant's oral and written testimony regarding his initial date of entry and continuous physical presence lacked credibility. The director informed the applicant that he had 30 days from the receipt of the NOID to submit any information the applicant felt was relevant to his case. The applicant did not respond to the NOID.

On March 24, 2006, the director denied the application, finding that records show that the applicant entered the United States on February 7, 1989, at John F. Kennedy Airport, New York, and that he was admitted as a nonimmigrant visitor for business. The director found that the

applicant had submitted insufficient evidence to support his assertion that he had continuously resided and had been continuously physically present in the United States prior to that date during the requisite periods.

On appeal, counsel for the applicant asserts that the director's decision was arbitrary considering the peculiar facts and circumstances of this case. Counsel further asserts that the director's decision is an abuse of discretion not supported by the documentation and testimony presented by the applicant. Counsel asserts that all of the applicant's testimony and documentation should 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 during the requisite period.

The applicant did not submit any documentation to support his Form I-485 application. The record contains a Senegalese passport issued to the applicant in Conakry, Guinea, on an unknown date. The passport contains a multiple entry nonimmigrant B-1 visa issued by the U.S. consular officer in Conakry on December 20, 1988, and an entry stamp to the United States, dated February 7, 1989. The only evidence submitted to support the applicant's assertion that he resided continuously in the United States before this date is several letters and affidavits submitted in support of his Form I-687, Application for Status as a Temporary Resident. The following evidence relates to the requisite period:

Employment Letters

- The applicant submitted an October 2, 1990 form affidavit from [redacted], a street vendor. [redacted] attested that he had personal knowledge that the applicant had resided in the United States from February 1981, through September 1987. [redacted] attested that the applicant had been his partner and was an honest guy.

This letter can be given little evidentiary weight. Specifically, the applicant's partner failed to provide the applicant's address at the time of his employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, [redacted] also failed to declare which records his information was taken from, to identify the location of such records, and state whether such records are accessible, or in the alternative state the reason why such records are unavailable. The letter did not list the applicant's duties. The letter lacks sufficient detail to be found probative.

Affidavits

- The applicant submitted two form affidavits, from [redacted], a clerk at the [redacted], located at [redacted], New York, New York, and

[redacted] a clerk at the [redacted] located at [redacted] New York, New York. [redacted] attests that the applicant resided at the hotel from 1987 to 1988. states that the applicant roomed with a friend who shared the room rent, and that they paid promptly and lived quietly in the room. attests that the applicant resided at the hotel from February 1981 to September 1987. [redacted] states that the applicant roomed with a friend who shared the room rent, and that they paid promptly and lived quietly in the room.

These letters can be given little evidentiary weight. Specifically, and [redacted] failed to state which business records their information was taken from, to identify the location of such records, and to state whether such records are accessible or, in the alternative state the reason why such records are unavailable. Furthermore, the letters lack sufficient detail to be found probative.

- The record of proceeding also contains letter from [redacted] a manager at Air Afrique. [redacted] attested that the applicant used Air Afrique's services to purchase an airline ticket on September 10, 1987, to travel to Senegal.

This affidavit is of little probative value and can be given little evidentiary weight, as it contradicts the applicant's oral testimony at his interview that the only time he left the United States after entering sometime in 1981 was in December 1988. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has not explained this discrepancy.

- The applicant submitted a letter from [redacted], from the Public Information section of the Malcolm Shabazz mosque in New York, New York. stated that the applicant is a member of the Muslim Community and that he has been here since August of 1981. stated the applicant attends Friday Jumah Prayer Services and other Prayer Services at the mosque.

This letter can be given little evidentiary weight and has little probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 245a.2(d)(3)(i). Specifically, [redacted] does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of his involvement with the mosque.

Although the applicant has submitted numerous letters and affidavits in support of his application, he 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 remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have last entered the United States on February 7, 1989, at Kennedy Airport, New York, New York, as nonimmigrant visitor for business, and to have resided for the duration of the requisite period in New York. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

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 8, 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.