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

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PUBLIC COPY

[redacted]

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FILE: [redacted] Office: NEW YORK Date: AUG 25 2008

MSC 02 185 60140

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits 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.

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 (director) in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he maintained continuous residence in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant's documentation and oral testimony were sufficient to warrant a favorable exercise of discretion, which the director should have exercised in this case.

To be eligible for adjustment to permanent resident status under the LIFE Act an applicant must establish his or her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and 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).

"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."

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 who claims to have lived in the United States continuously since December 1981, filed his application for permanent resident status under the LIFE Act (Form I-485) on April 3, 2002. In his interview at the New York District Office on February 11, 2004, the applicant stated that he departed the United States in July 1987 to visit his family in Senegal and returned in August 1988 with a B-2 visitor's visa.

In a Notice of Intent to Deny (NOID), issued on September 12, 2005, the director cited the applicant's testimony at his LIFE legalization that he was absent from the United States from July 1987 to August 1988, stated that an absence of such duration constituted a break in the applicant's U.S. residency of more than 45 days, and noted that no evidence had been submitted showing that "emergent reasons" prevented the applicant's return to the United States within the allowable period of 45 days. The applicant was granted 30 days to submit additional evidence.

The applicant responded on October 11, 2005 by submitting a Medical Certificate of Hospitalization, in French-language original with an English translation, signed by the chief physician of the health center at Darou Mousty, Senegal, dated September 19, 1987, stating that [redacted] [the applicant's mother] was hospitalized from August 10 to September 13, 1987 for "global heart deficiency on severe HTA." The certificate stated further that "[g]iven his [her] health state, a regular follow-up was undertaken monthly by the regular doctor." The applicant also submitted photocopies of other documentation relating to his asserted residence in the United States during the years 1981-1988.

On March 29, 2006, the director issued a Notice of Decision denying the application. The director noted that while the applicant stated at his interview that he went home for a family visit, his response to the NOID indicated for the first time that a parent was sick. While the hospitalization certificate showed that the hospitalization lasted just over a month, followed by monthly check-ups, the applicant stayed for over a year. The director concluded that the

applicant's return to the United States could have been accomplished within the period prescribed in the regulations, and denied the application on the grounds stated in the NOID.

On appeal, counsel asserts that the applicant's "documentation and oral testimony are sufficient to warrant a favorable exercise of discretion . . . considering the peculiar facts and circumstances of this case." No additional evidence is submitted.

It is undisputed that the applicant's absence from the United States from July 1987 to May 4, 1988 (the end date for LIFE legalization purposes) – far exceeded the 45-day maximum prescribed in the regulation at 8 C.F.R. § 245a.15(c)(1). An absence of such duration interrupts an alien's continuous residence in the United States unless (s)he can show that a timely return to the United States could not be accomplished due to emergent reasons. While the term "emergent reasons" is not defined in the regulations, there is some pertinent case law. In *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), the Board of Immigration Appeals held that *emergent* means "coming unexpectedly into being."

While the hospitalization of the applicant's parent may have been an event that came "unexpectedly into being," the record shows that the hospitalization was over in little more than a month and that regular check-ups were all that followed. Those circumstances do not appear especially peculiar to the AAO, counsel's assertion notwithstanding, and the applicant has provided no explanation whatsoever, much less any documentary evidence, as to why he needed to stay on in Senegal so long after the hospitalization ended. The applicant has provided no evidence of any further "emergent reason(s)" that prevented him from returning to the United States shortly after the hospitalization ended in September 1987.

For the reasons discussed above, the applicant has failed to establish that he resided continuously in the United States in an unlawful status 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 section 1104 of 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.