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

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: NEW YORK Date: JUL 30 2008

MSC 02 130 61399

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. 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 District Director, New York, 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 because the applicant failed to meet his burden of proof that he qualified for adjustment of status under the LIFE Act. The director noted that the applicant was unsure of the exact date of his initial entry into the United States and could provide no documentary evidence of that entry. The director also noted that the applicant's oral testimony was vague and generally inconsistent with the evidence in the record of proceedings. The director noted that the applicant furnished no documentation in support of his claim of residency other than affidavits that did not appear credible or amenable to verification. Finally, the director noted that the information the applicant provided on his Form I-589, Request for Asylum in the United States, conflicted with the information provided on his Form I-485, Application to Register Permanent Resident or Adjust Status under the LIFE Act.

On appeal, the applicant asserts that he submitted credible evidence to support his claim and that his application should be adjudicated on the merits. He asserts that he entered the United States before January 1, 1982, and stayed unlawfully during the statutory period except for one brief absence. He submits one additional affidavit.

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 record reflects that on December 8, 1993, the applicant filed an application for asylum with the New York Asylum Office. The applicant's case was referred to the New York Immigration Court, where the applicant withdrew his application for asylum on October 17, 1997, and was granted voluntary departure until May 17, 1998.

On February 7, 2002, the applicant submitted the current Form I-485, Application to Register Permanent Residence or Adjust Status. On June 16, 2004, the applicant appeared for an interview based on his application. That same day, the interviewing officer issued the applicant a Form I-72, Request for Evidence (RFE). In response, the applicant submitted final court dispositions for four convictions of disorderly conduct under New York Penal Law § 240.20.

On September 18, 2006, the director sent the applicant a Notice of Intent to Deny (NOID) the application. The district director denied the application because the applicant failed to meet his burden of proof that he qualified for adjustment of status under the LIFE Act. The director noted that the applicant was unsure of the exact date of his initial entry into the United States and could provide no documentary evidence of that entry. The director also noted that the applicant's oral testimony was vague and generally inconsistent with the evidence in the record of proceedings. The director noted that the applicant furnished no documentation in support of his claim of residency other than affidavits that did not appear credible or amenable to verification. Finally, the director noted that the information the applicant provided in his Asylum application conflicted with the information provided in his LIFE Act application. 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 director's request.

On October 30, 2006, the director denied the application for the reasons stated in the NOID.

On appeal, the applicant asserts that he submitted credible evidence to support his claim and that his application should be adjudicated on the merits. He asserts that he entered the United States

before January 1, 1982, and stayed unlawfully during the statutory period except for one brief absence. He submits one additional affidavit.

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 only documentation in the record to support the applicant's assertion that he was here during the requisite time period consists of the following affidavits:

- A letter dated November 10, 2006, from [redacted] along with a copy of Mr. [redacted] New York birth certificate. [redacted], (who the applicant refers to as [redacted] states that he has been friends with the applicant for the past 26 years. He states that they spent "10 years vending on the streets of New York City in 1980 – 1991, when [they were] separated from business". He states that they kept in contact and met frequently. [redacted] does not provide a date, place, or explanation of how he met the applicant. He states that he and the applicant worked together from 1980 through 1990, selling on the streets of New York but provides no details of these circumstances. He states that, thereafter, he and the applicant kept in contact and met frequently but does not describe how they kept in contact or how often and where they met. Based on the information provided in the affidavit, the affiant appears to have little if any personal knowledge of the applicant's claimed entry to the United States and of his continuous residence and continuous physical presence;

- One "Affidavit of Witness" form dated February 1, 2002 and signed by [redacted] The form indicates that the affiant has personal knowledge that the applicant has resided in the United States in New York from November 1981 to present time. The form allows the affiant to fill in a statement that he or she "is able to determine the date of the beginning of his or her acquaintance with the applicant in the United States from the following fact(s): ____." [redacted] added "I first met him on November of 1981 when I bought several goods from him." This affidavit, prepared on a fill-in-the-blank form, contains no details regarding any relationship with the applicant during the requisite period. [redacted] fails to indicate any personal knowledge of the applicant's claimed entry to the United States or of the circumstances of his residence other than the city where he resided. In addition, there is no evidence that the affiant resided in the United States during the requisite period;

- Four "Affidavit of Witness" forms dated on August 26, 1991. The forms, signed by [redacted] and [redacted] list the applicant's two addresses in New York from November 1981 through the date the forms were notarized, and are consistent with information on the applicant's Form

I-687. The form language states that the affiant has personal knowledge that the applicant has resided in the United States at the address listed. The form allows the affiant to fill in a statement that he or she "is able to determine the date of the beginning of his or her acquaintance with the applicant in the United States from the following fact(s): ____." [redacted] stated "We met in New York where we used to sell as peddlers since 1981. [redacted] is of a good moral character." [redacted] stated "I know [redacted] who a nice and very honest person. I recommend him to anyone who may need his services." [redacted] stated "We know each other in New York since 1981. We are also good friends." [redacted] stated "I met him in 1981. We have been together selling goods in city. He is a reliable person." Again, these affidavits, prepared on a fill-in-the-blank form, contain no details regarding any relationship with the applicant during the requisite period. They fail to indicate any personal knowledge of the applicant's claimed entry to the United States or of the circumstances of his residence other than his address. In addition, there is no evidence that the affiants resided in the United States during the requisite period;

- Two "Affidavit of Residence" forms dated August 27, 1991, signed by [redacted] The form language states that the rent receipts and household bills are in the affiant's name and that the applicant contributes toward the payment of the rent and household bills. [redacted] lists his current address and states that the applicant lived with him at that address from March 1984 to 1991. [redacted] lists his current address and states that the applicant lived with him at that address from November 1981 to March 1984. These affidavits, prepared on a fill-in-the-blank form, contain no details regarding any relationship with the applicant during the requisite period. They fail to indicate any personal knowledge of the applicant's claimed entry to the United States or of the circumstances of his residence other than his address. In addition, there is no evidence that the affiants resided in the United States during the requisite period;

- A fill-in-the-blank "Evidence Letter" dated November 6, 1991, signed by [redacted] The form language states that the applicant has been a friend of the affiant for a very long time. The form allows the affiant to fill in his own name, the name of the applicant, and a statement that the applicant "did support himself working as a": ____. The affiant added "self-employed street vendor in order to make a living." This fill-in-the-blank form, contains no details regarding any relationship with the applicant during the requisite period. The affiant does not state when or where he met the applicant or indicate any personal knowledge of the applicant's claimed entry to the United States or of the circumstances of his residence. In addition, there is no evidence that the affiant resided in the United States during the requisite period; and,

A fill-in-the-blank "Evidence Letter" dated November 6, 1991, signed by [redacted] The form allows the affiant to fill in his own name, the

applicant's name, the date, and the place the applicant traveled to "without a visa". The affiant filled in the blanks, indicating that the applicant traveled on May 15, 1987, to Canada, and again on May 18, 1987, through the border from Toronto to the United States. This form will be given no evidentiary weight as it is contains no information about the applicant's residence in the United States during the requisite period.

For the reasons noted above, these affidavits can be given little evidentiary weight and are of little probative value as evidence of the applicant's residence and presence in the United States for the requisite period. [redacted] and [redacted] who claim to have knowledge of the applicant's continuous residence and continuous physical presence in the United States since 1981, provide no meaningful details about the applicant's residence in the United States. They claim no personal knowledge of the applicant's arrival in the United States. They do not explain how they specifically recall the date when they first met him. and [redacted] fill-in-the-blank affidavits contain no details regarding any relationship with the applicant and no meaningful details about the circumstances of the applicant's residence during the requisite period. In addition, although the applicant has submitted numerous affidavits in support of his application, he has not provided any contemporaneous evidence of residence in the United States during the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have first entered the United States without inspection on November 20, 1981, 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.

Furthermore, the applicant has not explained the discrepancies between the statements contained in his asylum application and his LIFE Act application. Specifically, the record reflects that the applicant testified, under oath, in support of his1993 asylum application that he had problems with the government of Senegal because he was a member of the Democratic Party of Senegal since 1986 and was in charge of organizing party meetings. He testified that he participated in many anti-governmental demonstrations and that the authorities arrested his uncle. When he found they had arrested his uncle, the applicant went into hiding for four days then fled for the United States. His Form I-589 indicates that he used a false passport and visa to enter the United States on September 5, 1990. The form also indicates that the applicant's two children were born in Senegal in 1987 and 1991. In support of his 2002 LIFE Act application, the applicant asserted that he first entered the United States prior to January 1, 1982, that he has resided here continuously since then, and that he had only departed once, on May 15, 1987, for three days, to travel to Canada.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, or automobile, contract, and insurance documentation) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (I) and (K). The documentation provided by the applicant consists solely of affidavits. These third-party affidavits lack specific details as to how the affiants knew the applicant – how often and under what circumstances they had contact with the applicant – during the requisite time period from prior to 1982 through 1988.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the insufficiency in the evidence and the inconsistencies in the applicant's own testimony, the AAO determines that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, resided in this country in an unlawful status continuously since that time through May 4, 1988, and maintained continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

Beyond the decision of the director, the applicant is also ineligible for adjustment of status under the LIFE Act for his four disorderly conduct convictions. An applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status under the provisions of the LIFE Act. Section 1104 (c)(2)(D)(ii) of the LIFE Act; 8 C.F.R. §§ 245a.11(d)(1) and 18(a)(1). The regulations provide relevant definitions at 8 C.F.R. § 245a. The regulation at 8 C.F.R. § 244.1 defines a misdemeanor as a crime punishable by imprisonment for a term of less than one year, regardless of the term actually served, if any. In the applicant's case, he was convicted four times of disorderly conduct under New York Penal Law § 240.2: on June 25, 2001, July 9, 2001, December 17, 2001, and March 7, 2002. All four of these convictions were punishable by a term of imprisonment of up to 15 days. For purposes of LIFE Act eligibility, the applicant has been convicted of three misdemeanors and is ineligible to adjust status.

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. He has also been convicted of four misdemeanors. 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.