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

U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: [redacted] Office: TAMPA Date: OCT 30 2008

MSC 02 092 62954

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: On August 22, 2006, the Director, Tampa, Florida, 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 establish his entry into the United States prior to January 1, 1982, and his continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1998. The director noted that most of the information provided by the letters and affidavits the applicant submitted could not be verified or was contradicted by other evidence in the record.

On appeal, the applicant asserts that director demanded a level or standard of evidence that is impossible to meet. He asserts that the discrepancies the director pointed out were relatively small. The applicant asserts that it is nearly impossible to expect people to remember events from 20 or 25 years ago.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite period, 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 states 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of

continuous residence in the United States in an unlawful status prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. **§ 245a.2(d)(3)(vi)(L). See 8 C.F.R. § 245a.15(b). To meet his or her burden of proof, an** applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight that fill-in-the-blank affidavits providing generic information.

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.

A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. *See* 8 C.F.R. § 245a.14. In this case, the record reflects that the applicant applied for such class membership by submitting a "Form for Determination of Class Membership in CSS v. Meese [CSS lawsuit]," accompanied by a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)," filed on February 11, 1992.

On December 31, 2001, the applicant submitted the current Form I-485, Application to Register Permanent Residence or Adjust Status. On August 21, 2003, the applicant appeared for an interview based on his application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of establishing by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true. Upon examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

The applicant provided a Senegalese national identity document issued to him in Dakar on December 17, 1987, and a Form I-94, Departure Record, indicating that he entered the United States on June 30, 1990, as an F-1 student. The applicant has also provided the following evidence relating to the requisite period:

- A receipt from One Way Multi Service in New York City, dated November 7, 1981, indicating that the applicant purchased a roundtrip ticket from Chicago to NY. Although the applicant's name is written on this receipt, no address is included on it, and, while a receipt for purchase may indicate presence in the

United States on the date issued, it has minimal weight as evidence of continuous residence;

- A letter dated August 7, 2006, signed by [redacted], M.D., of Harlem Hospital Center. The letter is not notarized. The letter contains a heading that reads: "RE: August 81." Dr. [redacted] states that the applicant requires physical therapy to work on his motor milestones, that he "has mild gross motor developmental delay," and that he requires "occupational, feeding, nutrition, and speech/language therapy." Dr. [redacted] further states that the applicant originally visited him "because he had problems with his right leg." Dr. [redacted] indicates nothing more. Dr. [redacted] does not specify what problems the applicant had with his right leg. He also does not provide the date(s) of the applicant's visits in the past in the body of the letter. It is unclear if one of those dates was in August 1981. Given this lack of detail, the letter can be given minimal weight as evidence of the applicant's continuous residence or physical presence in the United States during the requisite period;

- A letter dated August 7, 2006, from [redacted], pastor at the Kelly Temple in New York City. Pastor [redacted] certifies that in 1981, the applicant visited the church together with his family to learn English as a second language. This letter can be given minimal evidentiary weight and has little probative value as [redacted] does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided while he and his family were enrolled in the language classes at the church. Furthermore, this letter could only be used to show physical presence in the United States in 1981, not continuous residence and continuous physical presence during the statutory periods;

- Two letters from [redacted]. In one letter, sworn to on August 7, 2006, Mr. [redacted] states that he is the general manager of the Hotel Mansfield Hall at 226 West 50th Street, New York, NY 10019. He states that he has known the applicant since 1984. He vouches for the applicant's residency and continuous physical presence from April 1984 to November 1987. He further states that the applicant lived in room 403. He states that the applicant is trustworthy, honest, and has earned his respect. In a supplemental undated, unnotarized letter, Mr. [redacted] states that he was the general manager of the Mansfield Hotel in 1984, when the applicant and his friend were tenants at the hotel. He states that they consistently paid their rent on time, that he has since developed a good friendship with the applicant, and that the applicant is trustworthy, honest, and has earned his respect. He states that he is currently the manger of the Park View Hotel in New York City. He states that when the first affidavit was submitted, his secretary incorrectly put that he is currently the manager of the Mansfield Hotel. These letters can be given minimal evidentiary weight. Mr. [redacted] does not explain how

he recalls the year when the applicant began living at the Mansfield Hotel and when he stopped living at the hotel, nor does he refer to any company records for his recollection. Even if the evidence were credible, it would only reflect residence and physical presence from 1984 to 1987, not for the period prior to 1984;

- Two statements from [redacted], a friend of the applicant's. In an "Affidavit of Witness" form sworn to on August 7, 2006, Mr. [redacted], indicates that the affiant knew the applicant from 1981-1988 and met the applicant on 14th Street and 6th Avenue. The form requests that the affiant "please comment about your relationship with the applicant." Mr. [redacted] added "I undersign [redacted] have known [the applicant] and his family since 1981 and to my knowledge he has always been a friendly hardworking man who works very hard for his family and since I have had the pleasure to call him my friend, I look at them more like my family than my friend." In the notarized letter dated September 18, 2006, Mr. [redacted] states that he met the applicant in 1981. He states that they sold merchandise together during the week on 14th Street and 6th Avenue, and that on the weekends, he worked in Queens. He states that the applicant is a very sincere and hardworking individual and that they have been friends ever since. These statements can be given minimal evidentiary weight. They contain few, if any, details regarding any relationship with the applicant during the requisite period. They also fail to indicate Mr. [redacted]s personal knowledge of the applicant's claimed entry to the United States or to provide any details of the circumstances of his residence;

- A letter dated August 5, 2006, from [redacted]. Mr. [redacted] states that he met the applicant in 1981 while he was working as a street vendor on Jamaica Avenue in New York. He states that he would go there on weekends and would always buy a hat or sunglasses from the applicant because he was a young vendor his age trying to make a living. He states that after a while, they became friends and the applicant would always give him good deals. Mr [redacted] states that he moved to Tampa in 1993 and they lost contact. He states that they bumped into each other in 1998 at a festival in Tampa and exchanged phone numbers. He goes on to describe how the applicant helped him and his wife start a business together. Mr. provides minimal details about the applicant's continuous residence and physical presence during the statutory period. He does not explain how he recalls that it was 1981 when he met the applicant and he appears to have no personal knowledge of the applicant's initial claimed entry into the United States;

- An undated affidavit from stating that he first met the applicant in New York in 1981 at the Hotel Bryant. He states that the applicant was his roommate at the Hotel Mansfield from 1984 to 1987, and that they shared the rent

and all household expenses. He states that they cooked, and took care of the dishes and cleaning the apartment. He states that in 1987 the applicant decided to move to Queens to live with relatives, but they remained in contact because they both peddled African jewelry and crafts on the streets of New York. This affidavit can be given minimal evidentiary weight as it provides insufficient details. Mr. [redacted] does not claim any personal knowledge of the applicant's arrival in the United States, and does not indicate how he remembers that it was 1981 when he first became acquainted with the applicant. Like the evidence from Mr. [redacted] above, even if this letter were credible, it would only reflect the applicant's residence and physical presence from 1984 to 1987, not for the period prior to 1984;

- A letter dated February 11, 1991, from [redacted], owner of [redacted] Deli. Mr. attests that the applicant worked there from March 1981 to April 1985. states that it was his understanding that the applicant left the deli to set up his own business. Little if no evidentiary weight can be given to this letter. Specifically, the employer failed to provide the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the employer also failed to 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 employment letter lacks sufficient detail to be found probative;

- Two fill-in-the-blank letters, both dated in February 1990. One letter, signed by an unknown clerk at the Hotel Bryant, address listed simply as Broadway at 54th Street, in New York City, states that the applicant lived at the hotel from February 1981 to March 1984. The second letter, signed by [redacted], a clerk at the Hotel Mansfield Hall, located at 226 West 50th Street, New York, New York, states that the applicant lived at the hotel from April 1984 to November 1987. These letters can be given little evidentiary weight. Specifically, [redacted] and the clerk at the Hotel Bryant 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;

- An "Affidavit of Witness" form sworn to on July 18, 1990. The form, signed by [redacted], a typewriter repairman, 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):

____." Mr. simply added "We met in a place where an African market was held at 125th street between Lenox and 5th Avenue" This affidavit, prepared on a fill-in-the-blank form, contains no details regarding any relationship with the applicant during the requisite period. While the addresses listed by Mr. [redacted] are consistent with the information provided by the applicant in his Form I-687, Application to Register as a Temporary Resident, Mr. [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. This affidavit is of little probative value and can be given little evidentiary weight, as it does not provide sufficient detail of the affiant's personal knowledge of the applicant's continuous residence and continuous physical presence. For example, the affiant does not describe how he knows where the applicant was residing based on his relationship with the applicant, how he recalled the date when he first made his acquaintance with the applicant, or how frequently he saw the applicant; and,

- A letter dated July 19, 1990, signed by from the Public Information section of the Malcolm Shabazz mosque in New York City. Mr. states that the applicant is a member of the Muslim Community and that he has been here since January of 1981. He states the applicant attended 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, Mr. [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.

For the reasons noted above, these letters and 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. 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 requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality.

The record of proceedings contains other documents, including residential leases dated January 16, 1997, and February 1, 2003; 2001 and 2002 Internal Revenue Service (IRS) Forms 1040, Individual Tax Return; the birth certificates of the applicant's children, [redacted], born on November 11, 1999, and Pauline, born on January 24, 2003, both in Hillsborough County, Florida; and the U.S. passport, of the applicant's child, [redacted], born on October 2, 1997, in New York. These documents all indicate physical presence after May 4, 1988, and do not address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

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 on January 1981, and to have resided for the duration of the requisite period in Florida and 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.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence he entered into the United States before January 1, 1982, and that he resided continuously in an unlawful status for the requisite period.

The absence of sufficiently detailed and probative documentation to corroborate the applicant's claim of entry and continuous residence for the entire requisite period, detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance documentation that lacks relevant details and any probative evidence of his entry and residence in the United States from prior to January 1, 1982 through May 4, 1988, the applicant has failed to establish by a preponderance of the evidence that he maintained continuous, unlawful residence in the United States as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.