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**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
*Office of Administrative Appeals* MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: DETROIT Date: AUG 03 2009

MSC 01 356 62646

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).

IN 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 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.

John F. Grissom
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Detroit, Michigan, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because: 1) sufficient evidence had not been submitted to establish whether his arrest resulted in a felony or misdemeanor conviction; and 2) the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, the applicant asserts that he has previously provided "the available documentation in support of my application." The applicant states that he has never had a felony conviction only a misdemeanor conviction.

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. Section 245A(b)(1)(C) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(b)(1)(C); 8 C.F.R. §§ 245a.11(d)(1) and 18(a)(1).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term actually served, if any; or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception when the offense is defined by the state as a misdemeanor and the sentence actually imposed is one year or less, regardless of the term actually served. Under this exception, for purposes of 8 C.F.R. § 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

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. Section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

"Continuous residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

> *Continuous residence.* An alien shall be regarded as having resided continuously in the United States if:
>
> (1) 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. [Emphasis added.]

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 periods, is admissible to the United States under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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 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 first issue to be addressed is the applicant's criminal history.

The record reflects that on November 12, 2002, the applicant was convicted of copying audio/video recordings for gain in Case no. 02-22361-FH-1. However, it was not clear whether the applicant had been convicted of a misdemeanor or felony offense as the photocopied court documents submitted contradict each other.

Specifically, the Presentence Investigation Report dated December 19, 2002, from the Michigan Department of Corrections reflects that the applicant was convicted of violating MCL 752.10541, a misdemeanor. However, the Judgment of Sentence dated January 8, 2003, from the State of Michigan, 10th Judicial Circuit in Saginaw County reflects that the applicant was ordered to pay a fine of $350.00 for violating MCL 752.10542, a felony.

On June 8, 2009, the AAO sent a letter to the applicant at his address of record requesting that he submit the certified court disposition including all court proceedings for [redacted] The applicant was also informed that a certified letter from the court may also be submitted explaining the contradicting documents noted above.

The applicant, in response, submitted certified court documents reflecting that he was initially charged with violating MCL 750.10542, copying audio/video recordings for gain, and MCL 157A, conspiracy. On November 12, the complaint was amended to include a misdemeanor charge of violating MCL 752.10542. The applicant was found guilty of the misdemeanor charge. On January 8, 2003, a *nolle prosequi* was entered for the remaining charges.

This misdemeanor conviction does not render the applicant ineligible for adjustment of status pursuant to 8 C.F.R. §§ 245a.11(d)(1) and 245a.18(a).

The second issue to be addressed 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. In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- A New York State driver license issued on May 10, 1985.
- A letter from [redacted], public information for Masjid Malcolm Shabazz in New York, New York, who indicated that the applicant has been a member since November 1981, and attended Friday Jumah prayer services as well as other prayer services at the Masjid.
- An affidavit from [redacted], who indicated that he has known the applicant since 1981. The affiant indicated that over the years the applicant has, as a customer, ridden in his taxi cab.
- A letter dated September 12, 1990, from [redacted], manager of Don Jin Trading Company, Inc., in New York City, who indicated that the applicant has been a regular customer in his store since 1981.
- An affidavit from an individual claiming to be a manager at the [redacted] located at [redacted] The individual attested to the applicant's residence at the hotel from November 1981 to January 1988. It is noted that the signature on the affidavit is indecipherable.
- Affidavits from [redacted] and [redacted] who attested to the applicant's residence in New York since November 1981. [redacted] indicated that he met the applicant in 1981 at a dance. [redacted] indicated that the applicant is a salesman and she bought perfumes from him on 43rd Street. [redacted] indicated that he first encountered the applicant in front of his work place in 1981 in New York City.

The director issued a Notice of Intent to Deny dated October 24, 2007, advising the applicant that the documentation submitted was insufficient to establish continuous residence in the United States since before January 1, 1982, through May 4, 1988.

The applicant, in response, submitted a copy of his New York State driver license that was issued on May 10, 1985 along with documents establishing his identity and presence subsequent to the requisite period.

The documents discussed above do not support a finding that the applicant continuously resided in the United States since before January 1, 1982, through May 4, 1988.

The affiants' statements do not provide detailed evidence establishing how they knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, an affiant's affidavit must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits from the affiants do not provide sufficient detail to establish that they had an ongoing relationship with the applicant that would permit them to know of the applicant's whereabouts and activities during the requisite period.

The signature on the letter from Bryant Hotel is indecipherable, and the AAO is unable to determine whether the signature is that of a person who was authorized and affiliated with the entity. The letter also raises questions to its authenticity as the applicant claimed on his initial application to have resided at this residence commencing in March 1985 and not 1981 as stated in the letter.

The record contains three separate Form I-687 applications signed by the applicant on November 15, 1987, September 15, 1990, and May 10, 1994. On his initial application, the applicant indicated he was absent from the United States from July 20, 1987 to October 1987. On his second application, the applicant indicated he was absent from September 24, 1987 to October 21, 1987. On his third application, the applicant indicated he was absent during 1990 only.

On his initial Form I-687 application and his Legalization Front-Desking Questionnaire signed May 24, 2000, the applicant indicated he was absent from the United States from July 1987 to October 1987. A LIFE legalization applicant must show continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* Section 1104(c)(2)(B) of the LIFE Act. An absence during this period which is found to be brief, casual and innocent shall not break a LIFE legalization applicant's continuous physical presence. A brief, casual and innocent absence means a temporary, occasional trip abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States. 8 C.F.R. § 245a.16(b). The AAO finds that the applicant's absence from

the United States in this case was not temporary or occasional in that the record indicates that he was absent from the United States for more than 45 days.[1]

The applicant's passport ([redacted] indicates that it was issued in 1986 in Senegal and that a non-immigrant multiple visitor visa was issued at the American Embassy in Abidjan, Ivory Coast on July 24, 1987. The applicant lawfully entered the United States on July 30, 1987, and October 21, 1987. The passport also indicates that the applicant entered Abidjan on July 30, 1987, and departed from Dakar, Senegal on September 2, 1987. Service records also reflect that the applicant lawfully entered the United States on August 12, 1986, September 6, 1986, and October 7, 1986. The applicant, however, indicated on two of his Form I-687 applications to have been only absent from the United States in 1987. The applicant's failure to disclose these 1986 absences from the United States is a strong indication that the applicant was not continuously residing in the United States during the requisite period or may have been outside the United States beyond the period of time allowed by regulation.

The letter from [redacted] has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the affiant does not explain the origin of the information to which he attests. The letter also raises questions to its authenticity as the applicant did not claim on his initial application to have been associated or affiliated with any religious organization during the requisite period.

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 applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The lack of detail in the supporting documentation and the inconsistencies in the evidence raise serious questions regarding the authenticity of the supporting documents submitted with the LIFE application. Further, the applicant's 1987 absence was not brief, casual and innocent and constituted a break in his continuous physical presence in the United States. It is therefore determined 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 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant 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.

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[1] The regulation implementing the statutory requirement of "continuous unlawful residence" in the United States defines that term as no single absence from the United States exceeding 45 days and absences in the aggregate not exceeding 180 days. See, 8 C.F.R. § 245a.15(c)(1). The term "continuous physical presence" suggests that a shorter time frame should be applied to determine the permissible length of single and aggregate absences from the United States during the period from November 6, 1986 to May 4, 1988.