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U.S. Department of Homeland Security
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Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: FEB 03 2009

– consolidated]

MSC 02 133 60951

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. 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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant failed to establish that he entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988, as required under section 1104(c)(2)(B) and (C) of the LIFE Act.

On appeal, the applicant submits a brief statement and an additional document.

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 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 since 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 than 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.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v), states that attestations from churches, unions, or other organizations should: identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided during the membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

The applicant filed the current Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on February 10, 2002. The director denied the application on August 30, 2007. The applicant filed a timely appeal from that decision on October 1, 2007.

The applicant, a national and citizen of Senegal, claims to have initially entered the United States in January 1981, and to have departed the United States on only two occasions during the requisite time period - from October 10, 1983, to November 14, 1983; and from November 14, 1987, to December 10, 1987, - in order to visit family in Senegal.

The AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also*, *Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO's *de novo* review authority. *See,* e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has established that he continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

In an attempt to establish his continuous unlawful residence in the United States during the requisite time, the applicant has submitted the following documentation throughout the application process:

Letters from hotels attesting to the applicant's residence in the United States prior to January 1, 1982, through November 1987:

1. A letter, dated February 22, 1990, from the [redacted]., in New York, stating that the applicant resided at the hotel from January 1981 to March 1983 - that "he roomed with a friend who shared the room rent." A similar letter, dated February 13, 1990 from the [redacted]n New York, New York, states that the applicant resided at that hotel from April 1983 to November 1987. Although the letters contain original signatures from alleged clerks at the hotels, they were prepared on photocopies of letterhead stationary. There was no telephone number provided by the [redacted], and the telephone number provided by [redacted] no longer relates to that business. Combined with the fact that the applicant has provided no corroborative documentation regarding his residence at these locations, the letters are deemed to have little, if any, evidentiary value or probative value.

Letters from organizations:

2. A letter, dated August 20, 1990, from [redacted] of the Masjid Malcolm Shabazz in New York, stating that the applicant had been a member, attending various prayer services, since 1981. The letter from [redacted] does not show the address(es) where the applicant resided throughout the membership period or establish the origin of the information being attested to (i.e., whether the information being attested to is anecdotal or comes from church membership records). Furthermore, although the letter contains [redacted] original signature, the letterhead stationary is a photocopy and there is no seal of the organization affixed to the letter.

3. A letter, dated February 20, 2004, [redacted], identified as a community services director, states that the Masjid's "present administration has been established since 1993," and that the applicant is a "regular attendee and participant in required services." The letter from [redacted] suffers from the same discrepancies noted in No. 2, above. Furthermore, it is not notarized and does not list the inclusive dates of the applicant's membership.

4. A letter, notarized on February 23, 2004, from [redacted] of the Masjid (see Nos. 2 and 3, above) stating that he had known the applicant since 1985. This letter also suffers from the same discrepancies as those noted in No. 2, above.

5. A letter, dated February 3, 2004, from the Permanent Secretary (signature illegible) of the Murid Islamic Community in America in New York, New York, stating that the applicant had been a member since 1987. While otherwise credible, this letter also does

not indicate the applicant's address during the time of his membership and only attests to his membership in the organization since an unspecified date in 1987.

Letters from acquaintances attesting to the applicant's residence and presence in the United States in or after 1983:

6. A letter, dated December 24, 1990, from [redacted]ci, owner of [redacted] in Bronx, New York, stating that the applicant had been employed from March 1983 to April 1985. The employment letter provided by [redacted] does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that it fails to provide the applicant's address at the time of employment; identify the exact period of employment; 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.

7. A letter, dated February 21, 1999, from [redacted] of New York, New York, stating that the applicant used to work with her husband at Vanguard Co. in Brooklyn from February 1988 until June 1991 when the company went out of business.

8. A letter, dated December 21, 1990, from Air Afrique, stating that the applicant departed New York to travel to Senegal on November 14, 1987.

9. A letter, Dated February 5, 2004, from [redacted], president of [redacted] in Bronx, New York, stating that he had known the applicant since a little after the mid 1980's.

10. An affidavit, dated August 20, 2007, from [redacted] of New York, New York, stating that she met the applicant soon after she arrived in the United States in 1984.

In summary, for the duration of the requisite time period, 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), no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv), and no church, union or organization attestations that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(v)(A) through (G). 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 or Selective Service card, automobile license receipts, deeds, tax receipts, insurance policies or other similar documentation) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K).

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).

Based on a review of the record, given the paucity of the documentation provided by the applicant, 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, 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.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.

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