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U.S. Citizenship and Immigration Services

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[redacted]

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

MSC 01 345 62070

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.

John H. Vaughan

for 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 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 entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel asserts that the applicant submitted sufficient documentation to establish that he entered the United States before January 1, 1982, and resided continuously in the country in an unlawful status through the requisite period for LIFE legalization.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their 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." (Emphases added.)

"Continuous physical presence" is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: "An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States." (Emphasis added.) The regulation further explains that "[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips 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." (Emphasis added.) 8 C.F.R. § 245a.16(b).

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 Gambia who claims to have lived in the United States since December 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on September 10, 2001.

In a Notice of Intent to Deny (NOID) dated June 23, 2007, the director indicated that the applicant had not submitted sufficient credible evidence to establish that he entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

The applicant responded, but did not submit any further evidence. On August 2, 2007, the director issued a Notice of Decision denying the application on the ground that the response was insufficient to overcome the grounds for denial.

On appeal, counsel asserts that the applicant submitted sufficient evidence to establish his eligibility for LIFE legalization. Counsel submits no additional documentation with the appeal.

The AAO maintains plenary power to review each appeal 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 AAO's de novo authority has been long recognized by the federal courts. *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 furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The documentation submitted by the applicant in support of his claim that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through May 4, 1988, consists of the following:

> A notarized statement from the manager of [redacted] in New York City, dated October 12, 1989, stating that the applicant had resided at the hotel from December 1981 to March 1988.
> An undated letter from [redacted] stating that he had been acquainted with the applicant since 1984 when the applicant worked at the "firehouse" on [redacted].

The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

A copy of the applicant's expired passport in the file shows that the applicant was issued a passport in Banjul, Gambia, on January 29, 1988. In the passport is a stamp by the United States Embassy in Banjul showing that the applicant was issued a B-1 visa on March 2, 1988, valid for three months, which he used to enter the United States at New York City on March 23, 1988. The applicant indicated on his Form I-687 (application for status as a temporary resident) dated November 15, 1989, that he entered the United States in December 1981, resided continuously in the country except for one absence from the country during the time period of January 1, 1982 through May 4, 1988 – a trip to Gambia from February 15, 1988 to March 23, 1988. The applicant did not indicate any other absence from the United States during the 1980s. The passport issue date of January 29, 1988, however, clearly indicates that the applicant was in Gambia at that time. The conflicting information in the record regarding the applicant's initial entry into the United States and the number of his absences from the country during the years 1982 to 1988 casts doubt on the veracity of the applicant's claim that he entered the United States before January 1, 1982 and resided continuously in an unlawful status in the country through May 4, 1988, as required for legalization under the LIFE Act. At the very least, the applicant's presence in Gambia from January 29, 1988 to March 23, 1988 – a period of 55 days – exceeded the 45-day maximum for a single absence from the United States allowed in the regulation at 8 U.S.C. § 245a.15(c)(1).

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 without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

The letter from [redacted] dated October 12, 1989, was signed by an individual carrying the title of "manager" who attests to the applicant's residence at the hotel from December 1981 to March 1988. The signatory of the letter does not identify the source of his information, such as specific business records, about the applicant's residence at the hotel. Nor is the letter supplemented by copies of rental receipts, utility bills, or other documentation to show that the applicant actually resided at the address during the years indicated. In view of these substantive deficiencies, the letter has little probative value. It is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

As for the letter from [redacted], it states only that he became acquainted with the applicant in 1984 at the "firehouse" – an employment locale the applicant did not mention anywhere in the record. The author provides few details about the applicant's life in the United States, and the nature and extent of his interaction with the applicant over the years. Nor is the letter accompanied by any documentary evidence – such as photographs, letters, and the like – of the personal relationship between the author and the applicant in the United States during the 1980s. In view of these substantive shortcomings, the letter from [redacted] has little probative value. It is not persuasive evidence of the applicant's continuous unlawful residence in the United States from 1984 through May 4, 1988, much less in the earlier years back to 1981.

In fact, there is no evidence of the applicant's presence in the United States at any time prior to his entry on a B-1 visa on March 23, 1988.

Based on the foregoing analysis of the record, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982 and 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 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.