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

L2

[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK

Date: **MAR 18 2009**

, consolidated therein]

MSC 03 241 61074

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.

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 denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988. The director noted that the applicant had a prolonged absence during the requisite period.

On appeal, the applicant states his absence in 1985 was to visit his sick mother and it was risky to return to the United States. The applicant does not submit additional evidence on appeal.

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 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.

In the Notice of Intent to Deny (NOID), dated December 17, 2007, the director stated that the applicant failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States throughout the requisite period. The director noted that the applicant submitted affidavits neither credible nor amenable to verification. The director also noted that the applicant testified, at his interview on December 1, 2004, that he had departed the United States in December 1985, for Senegal, and returned to the United States on November 8, 1987 using a visitor's visa. The director also noted the applicant's passport was issued in Dakar, Senegal on June 2, 1987, and the passport contained a United States visitor's visa, issued in Dakar on October 23, 1987. The director determined, therefore, that the applicant had been absent for several months and had exceeded the 45-day limit for a single absence, and therefore, he could not establish the requisite continuous unlawful residence. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated January 22, 2008, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant responded to the NOID, but failed to overcome the reasons for denial as stated in the NOID.

It is noted that the applicant submitted two letters, dated February 5, 1993, stating that he was not aware that he sought to obtain "papers illegally," and, he was not aware of the wrong-doing of preparers or organizations that had prepared fraudulent documentation. However, there is no remedy available for an applicant who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on his or her behalf. *See* 8 C.F.R. § 292.1. Furthermore, USCIS is not responsible for action, or inaction, of the applicant's representative.

The applicant cannot avoid the record he has created. As noted above, the record of proceeding contains affidavits from [REDACTED], and [REDACTED] that are questionable, and are deemed fraudulent. The documentation submitted by the applicant in support of his application is an indelible part of the record. As such, it cannot be purged from the record. The AAO will, therefore, examine the entire record and make its determination of the applicant's eligibility based on the entire record as constituted.

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 AAO has reviewed the entire record. The applicant submitted a letter of employment, receipts and statements as evidence to support his Form I-485 application. Here, the submitted evidence is neither probative, nor credible.

The applicant has failed to provide sufficient evidence to support his claim of continuous residence throughout the requisite period. As noted by the director, the record of proceedings reflects that the applicant testified at his interview on December 1, 2004 that he had departed the United States in December 1985, for Senegal, and returned to the United States on November 8, 1987 using a visitor's visa. The applicant's passport was issued in Dakar, Senegal on June 2, 1987, and his passport contains a United States visitor's visa, issued in Dakar on October 23, 1987. In addition, the applicant submitted a letter dated February 5, 1993, confirming that he had departed the United States and returned to his country, in 1985, and he sought to obtain a visa in his country. The record is clear that the applicant had a prolonged absence of approximately 23 months, from December 1985 until November 1987.

The regulation at 8 C.F.R. § 245a.15(c)(1) provides that 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.

The applicant cannot establish that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as he has exceeded the forty-five (45) day limit for a single absence, and a 180 day aggregate of all absences, from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1)(i).

The applicant states that he departed the United States in 1985 to visit his sick mother, and that it was risky to return to the United States. The applicant, however, has failed to provide any documentation that his prolonged absence, exceeding 45 days, was due to emergent reasons, or that his return to the United States could not be accomplished within the time period allowed.

In addition, the applicant has submitted questionable documentation. Specifically, the applicant provided affidavits from [REDACTED], and [REDACTED] that are questionable, and are deemed fraudulent, as previous applicants have presented affidavits of the same type from these establishments.

This casts doubt on whether the applicant has been in the United States since prior to January 1, 1982 as he claims. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective

evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in his testimony and in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

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. 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.