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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEW YORK Date: MAR 24 2009

MSC 02 106 63560

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 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 resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988.

On appeal the applicant submits additional documentation as evidence that his residence and physical presence in the United States were not interrupted by an absence from the country of a nature and duration beyond the time allowed for aliens seeking legalization under the LIFE Act.

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 Senegal who claims to have lived in the United States since February 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on January 14, 2002.

On March 1, 2008, the director issued a Notice of Intent to Deny (NOID). The director cited documentation submitted by the applicant in 1989 in which he stated that he was absent from the United States from December 26, 1987 to March 23, 1988, for the purpose of visiting family and friends in Senegal. This 86-day absence interrupted the applicant's continuous residence in the United States, the director indicated, because it exceeded the 45-day limit prescribed in 8 C.F.R. § 245a.15(c)(1), and there was no evidence that "emergent reasons" prevented the applicant's earlier return. [1] The director also indicated that this absence interrupted the applicant's continuous physical presence in the United States because it was not "brief, casual, and

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[1] While the term "emergent reasons" is not defined in the regulations, there is some pertinent case law. In *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), the Board of Immigration Appeals held that *emergent* means "coming unexpectedly into being."

innocent" within the meaning of 8 C.F.R. § 245a.16(b). The director ruled, therefore, the applicant had not established his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988, as required under section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act. The applicant was granted 30 days to submit additional evidence.

The applicant responded with a notarized letter explaining that his extended stay in [redacted] from December 1987 to March 1988 was due to his father's sickness, which necessitated that he provide assistance and attend to his father's needs during his time in the hospital.

On March 20, 2008, the director issued a Notice of Decision denying the application. The information provided in the notarized letter could not be verified, the director declared, and was not accompanied by any medical documentation supporting the applicant's claim that his father was ill. The director concluded that the applicant had not established that his return to the United States was delayed due to emergent reasons, and that his absence from the United States was brief, casual, and innocent. Accordingly, the application was denied for failure of the applicant to establish that he was continuously resident and continuously physically present in the United States during the requisite periods for LIFE legalization.

On appeal the applicant submits a photocopied document in French, with an English translation – entitled "Medical Certificate of Hospitalization and Observation" – from [redacted] in dated April 3, 1988. According to this document the applicant's father, was hospitalized at the King Baudouin Health Center with "pulmonary tuberculosis" from December 29, 1987 to April 3, 1988. Due to the severity of the illness, Dr. [redacted] wrote, the presence of the patient's son (the applicant) was greatly desired.

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).

It is curious that the photocopied medical certificate attesting to the desirability of the applicant's stay with his father postdated the applicant's return to the United States, which occurred 11 days earlier on March 23, 1988. The applicant also has not explained why other family members could not have attended his father. In a previous application (Form I-687) filed in 1989, for example, the applicant listed two brothers who lived in [redacted] Based on the entire record, the AAO determines that the applicant has not established that an emergent reason prevented his return to the United States from [redacted] in 1988 within the 45-day period prescribed in 8 C.F.R. § 245a.15(c)(1), and that his absence from the United States at that time was brief, casual, and innocent within the meaning of 8 C.F.R. § 245a.16(b). Thus, the grounds for denial as discussed in the director's decision have not been overcome.

Even if the AAO were to find that the medical certificate from [redacted] was sufficient evidence to establish that an emergent reason prevented the applicant's return to the United States within 45 days and that the applicant's absence from the United States at that time was brief, casual, and innocent, the evidence of record still does not establish that the applicant entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status from before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

The only evidence of the applicant's residence in the United States during the requisite period for LIFE legalization are a series of notarized letters and affidavits in 2003 and 2008 from:

[redacted] a resident of South Orange, New Jersey, stating that he met the applicant in Gambia in May 1984, and that the applicant has been a member of the Murid Islamic Community of America "since his arrival in the U.S. in 1986."

a resident of New York City, stating that he lived with the applicant at [redacted] in 1982 and 1983, at which time they both moved to [redacted] where they also lived when the applicant returned from [redacted] in 1988.

- [redacted] a resident of New York City, stating that he used to visit the applicant at [redacted] in 1982 and continued to visit him after the applicant moved to [redacted].

The information provided in the foregoing documents completely undermines the applicant's claim to have resided continuously in the United States during the years 1981 to 1988. Mr. [redacted] states that he met the applicant in Gambia in May 1984 – a time the applicant claims to have been in the United States – and that the applicant arrived in the United States in 1986. Furthermore, the two addresses at which [redacted] claim to have resided with or visited the applicant between 1982 and 1988 are different from the single address identified by the applicant in the first Form I-687 (application for temporary resident status) he submitted in September 1989 and the second Form I-687 he filed in April 2001. In both of those forms the applicant listed his address during the years 1981 to 1988 as [redacted].

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). Moreover, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. ***See id.*** **In this case, the** applicant has not explained any of the inconsistent information discussed above.

Based on the foregoing analysis of the record, the AAO determines 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. 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.