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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529–2090

U.S. Citizenship and Immigration Services

L2

[redacted]

Date: MAY 0 5 2011 Office: SAN FRANCISCO FILE: [redacted]

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the director of the San Francisco office and is now before the Administrative Appeals Office (AAO) on appeal.[1] The appeal will be dismissed.

The director denied the application, finding that the applicant had not established by a preponderance of the evidence that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988. In addition, the director denied the application, finding that the applicant had been absent from the United States for over 45 days and had failed to establish that his return had been delayed due to an emergent reason.

On appeal, counsel asserts that the evidence which the applicant previously submitted establishes by a preponderance of the evidence that he continuously resided in the United States in an unlawful status for the duration of the requisite period. In addition, counsel asserts that the applicant's return to the United States was delayed due to an emergent reason. The applicant has submitted additional evidence on appeal. The AAO has considered counsel's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.[2]

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that he or she entered the United States before January 1, 1982, and resided in continuous unlawful status since that date through May 4, 1988. 8 C.F.R. § 245a.15(a).

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. See 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the

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[1] The AAO notes that the director erroneously instructed the applicant to submit a Form I-694, Notice of Appeal, instead of a Form I-290B, Notice of Appeal. The AAO accepts the applicant's appeal on Form I-694.

[2] The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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 or petitioner 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 or petition. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

The first 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 that he continuously resided in the United States in an unlawful status since such date and through May 4, 1988. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of witness statements and documents. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The record contains witness statements from [redacted] and [redacted]. The statements are general in nature, and state that the witnesses have knowledge of the applicant's residence in the United States for all, or a portion of, the requisite period.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness statements do not provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations, and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period. To be considered probative and credible, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific period. Their content must include sufficient detail from a claimed relationship to indicate that it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. For instance, the witnesses do not state how they date their initial meeting with the applicant in the United States, or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The witnesses also do not state how frequently they had contact with the applicant during the requisite period. The witnesses do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness statements do not indicate that their assertions are probably true.

In addition, in a statement dated February 8, 2008, [redacted] states that the applicant resided with him in New York on [redacted] from December 1981 to April 1986, and on [redacted] from June 1986 to November 1986, and on [redacted] from November 1986 to April 1987. In statements dated November 22, 1988, the witness states that the applicant resided with him at these different addresses. However, in a statement dated May 12, 2005, the witness states that he and the applicant once lived together in 1986. Further, the testimony of the witness is inconsistent with the testimony of the applicant in an I-687, application for temporary resident status, filed in 1988, in which the applicant stated that he resided on [redacted] from December 1981 to April 1986, and from June 1986 to November 1986, on [redacted] from November 1986 to April 1987, and on [redacted] from April 1987 through the end of the requisite period. Also, in a statement dated November 22, 1988, [redacted] states that the applicant was absent from the United States to travel to Senegal from June 22, 1987 through the end of the requisite period. [redacted] states that the applicant was absent from the United States to travel to Senegal from June 1986 through the end of the requisite period. However, the testimony of the witnesses is inconsistent with the testimony of the applicant in the I-687 application filed in 1988, in which the applicant does not list any absences during the requisite period. Due to these inconsistencies, the testimony of these witnesses will be given no weight.

The record contains a letter from [redacted], from the public information department of [redacted] in New York, stating that the applicant has been a member of the Muslim community in the United States since December 1981.

The letter from [redacted] does not meet the requirements set forth at 8 C.F.R. § 245a.2(d)(3)(v), which provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership (4) state the

address where the applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. This attestation fails to comply with the cited regulation. Therefore, this attestation is of little probative value.

The applicant has submitted copies of documents from [redacted] in New York, showing that he registered for classes beginning on November 1, 1985. However, in one of the registration documents, the applicant listed his address as [redacted] The applicant failed to list this address as a residence in the I-687 application filed in 1988. Due to this inconsistency, these documents will be given no weight.

The remaining evidence in the record is comprised of copies of the applicant's statements, the I-485 application and a Form I-687, application for status as a temporary resident, filed in 1988 to establish the applicant's CSS class membership.

The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding the date of his first entry into the United States and the dates of his absences from the United States during the requisite period.

In the I-687 application filed in 1988, the applicant stated that he first came to the United States on December 21, 1981. The applicant listed residences and self-employment in New York beginning in December 1981. He did not list any absences from the United States during the requisite period.[3]

The record contains a Form G-325A, biographic information sheets, signed by the applicant on April 3, 2003, and filed contemporaneously with the I-485 application. The Form G-325A requests applicants to list their last address outside the United States of more than one year. On the Form G-325A, the applicant stated that he resided in [redacted] from 1985 to October 1988. The Form G-325A also requests applicants to list their last occupation outside the United States. On the Form G-325A, the applicant stated that he was a general manager at [redacted] from 1982 to October 1988. The contradictions are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States for the duration of the requisite period. As stated above, 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. *Matter of Ho, supra.* The contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

[3] In the I-687 application, the applicant listed one absence from the United States, in October 1988. However, In a class member worksheet signed by the applicant on November 23, 1988, and filed contemporaneously with the I-687 application, he stated that his most recent absence from the United States was from October 8, 1988 to November 29, 1988. While outside of the requisite period, the inconsistency calls into question the veracity of the applicant's testimony concerning his continuous residence in the United States during the requisite period.

The applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period. The inconsistencies regarding the date of his first entry into the United States, the particular locations where he resided during the requisite period, and the dates of his absences from the United States during the requisite period are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence pointing to where the truth lies. 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. *Matter of Ho,* 19 I & N Dec. 582, 591-592 (BIA). These contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought. The various statements currently in the record which attempt to substantiate the applicant's residence and employment in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

Therefore, based upon the foregoing, the applicant has failed to establish continuous residence in an unlawful status in the United States for some time prior to January 1, 1982 and through May 4, 1988. The applicant is, therefore, not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

The second issue in this proceeding is whether the applicant's absence from the United States constitutes a break in his required continuous residence and continuous physical presence.

According to 8 C.F.R. § 245a.15(c)(1), an applicant for adjustment of status under the LIFE Act shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982, through the date the application is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

An applicant under the LIFE Act must also establish that he or she was continuously physically present in the United States from November 6, 1986, through May 4, 1988. *See* 8 C.F.R. § 245a. 16(a). According to 8 C.F.R. § 245a. 16(b):

> For purposes of this section, 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. Also, brief, casual, and innocent absences from the United States are not limited to absences with advance parole. Brief, 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. (Amended 6/4/02; 67 FR 38341)

The regulation at 8 C.F.R. § 245a.15(c)(1) provides an exception to the continuous residence requirement, if a single absence exceeded 45 days, and the aggregate of all absences did not exceed 180 days between January 1, 1982, through the date the application is filed, if the applicant can establish that due to emergent reasons, his return to the United States could not be accomplished within the time period allowed.

The relevant issue under the regulation is not the fact that the applicant's stay was lengthened by complications, but rather whether the applicant, when leaving the United States, reasonably expected to return within the 45 day time limit, *Ruginsky v. INS*, 942 F.2d 13 (1st Cir. 1991).

On appeal, counsel submits an additional statement from the applicant, stating that he was absent from the United States from June or July 1986 until September 1988, a period of approximately 763 days. The applicant states that he left the United States because his mother was ill. He asserts that his mother's ill health and death, and his own battle with tuberculosis (TB) while in Senegal, were emergent reasons that prevented his return to the United States in a timely manner. In support of his assertions, the applicant submitted a doctor's letter from [redacted] dated February 12, 2008, which states that on November 16, 1987, the applicant was hospitalized for TB treatment. The letter also states that the applicant received a three-month course of treatment, and subsequently received an 18-month course of treatment for TB. The doctor did not enclose any medical records regarding the applicant's treatment in 1987 or 1988. The applicant did not submit a death certificate for his mother. On appeal, the applicant submitted several pages from his Senegalese passport number 18905/B-85, which reveal that he was issued nonimmigrant B-2 visitor's visas in [redacted] on July 22, 1987 and August 11, 1988, respectively.

In an affidavit dated February 12, 2008, the applicant stated that his mother died in November 1986.

However, in statements dated February 18, 2004, and February 18, 2004, the applicant stated that taking care of family matters was the emergent reason that delayed his return to the United States until September 1988, and did not claim that he was ill in Senegal.

In a Form I-693, Medical Examination Form, dated March 3, 2003, the medical history that the applicant provided the examining doctor was that in 1980 he underwent a six-month course of treatment for TB; he did not provide a history of having been treated for TB in Senegal in 1987 or 1988.

In the I-687 application filed in 1988, the applicant stated at number 20 that his mother died in 1987. However, at number 35, the applicant also stated he traveled to Senegal in October 1988 because his mother was very sick.

The applicant's stated absence from the United States from June or July 1986 to September 1988, a period of more than 45 days, is clearly a break in any period of continuous residence he may have established. The evidence submitted by the applicant does not establish that there was an "emergent reason" that prevented his timely return to the United States; there are inconsistencies in the applicant's testimony regarding the dates of his absence from the United States during the requisite period, the reason for his absence from the United States, and the "emergent reason" that prevented his timely return. Since the evidence submitted by the applicant does not establish that there was an "emergent reason" for his failure to return to the United States in a timely manner, he has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for some time prior to January 1, 1982 and through May 4, 1988. Thus, he is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act on this basis.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. The applicant is, therefore, 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.