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MAR 07 2007

FILE: Office: NEW YORK Date:  
MSC 01 284 60188

IN RE: Applicant:

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:

**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, New York, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had entered into and continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The director also denied the application because the applicant has been convicted of three or more misdemeanors and is thus ineligible for adjustment to permanent resident status under the LIFE Act.

On appeal, counsel asserts that the applicant has submitted sufficient evidence of residency in the United States for the qualifying period.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. 8 C.F.R. § 245a.11(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 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 petitioner 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.

Here, the submitted evidence is not relevant, probative, and credible.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence throughout the application process:

- A letter dated July 5, 2001 from [REDACTED] stating that she met the applicant in lower Manhattan in the summer of 1981, that they “became friendly after seeing each other when I was out on my lunch hour.”
- A letter dated October 3, 1989 from [REDACTED] of Masjid Malcolm Shabazz stating that the applicant attends prayer services at the mosque and has been in the United States since August 1981.

On August 14, 2004, the director issued a Notice of Intent to Deny (NOID) stating “there were significant and glaring discrepancies between [the applicant’s] oral testimony and the records of the Agency.” Citing lengthy portions of testimony apparently from the applicant’s interview, the director observed that the applicant could provide few details concerning his alleged illegal entry in 1981. The director also noted that the applicant indicated that he was married in Senegal in 1984 and determined that the evidence showed that the applicant entered the United States for the first time when he was admitted in B-1 status in 1987. Finally, the director determined that the applicant was ineligible to adjust status under the LIFE Act as an individual convicted of a felony or three or more misdemeanors because documents from the Criminal Court of the City of New York showed that the applicant had pled guilty to violation of section 240.20 (Disorderly Conduct) of the New York Penal Law (NYPL) on eight occasions.

In a response to the NOID dated September 14, 2004, counsel stated that the applicant could not remember any details of his entry into the United States in 1981. Counsel asserted that the applicant had established that he “was physically present in the United States during the threshold period beginning in November 6, 1986, and ending on May 4, 1993.”

In the decision to deny the application dated December 28, 2004, the director stated that the applicant’s “rebuttal does not meet the burden of proof,” and denied the application for the reasons set forth in the NOID.

On appeal, counsel makes the same assertions made in his rebuttal to the NOID.

As indicated above, the Notice of Intent to Deny (NOID) contains long passages of testimony that appear to be verbatim transcriptions of applicant’s interview. However, this testimony is not found elsewhere in the record. Accordingly, the AAO finds that there is insufficient evidence in the record to support the director’s findings that the applicant’s oral testimony was inconsistent with other information in the record, and these findings are withdrawn.

Nevertheless, the record shows that the applicant was admitted into the United States in 1987, and the applicant has not submitted insufficient evidence to demonstrate that he first entered the United States in 1981 and resided within the United States continuously thereafter until his departure and re-entry in 1987. The applicant has provided few details concerning his alleged entry in 1981. The two documents submitted by the applicant as proof of residency also lack detail. Ms. Armstead-Salla states only that she met and became friends with the applicant in 1981, but fails to provide the

address at which the applicant resided at that time or to indicate whether she has any knowledge that the applicant resided in the United States after 1981. The letter from [REDACTED] fails to provide sufficient information concerning the basis for the [REDACTED]'s knowledge that the applicant has been in the United States since 1981.

Furthermore, the applicant is ineligible for adjustment to permanent resident status under the LIFE Act for his commission and conviction of three or more misdemeanors in the United States.

The regulation at 8 C.F.R. § 245a.18(a)(1) provides that an alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is ineligible for adjustment to permanent resident status under the LIFE Act. The regulation at 8 C.F.R. § 245a.1(o)(1) defines a misdemeanor as a crime "punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served."

The record shows that the applicant has pled guilty to violating NYPL § 240.20 (Disorderly Conduct) on at least eight separate occasions. Violation of this section is considered a "violation" under New York law rather than a misdemeanor or felony. Nevertheless, violations are punishable by a maximum of fifteen days imprisonment. *See* NYPL §70.15(4). Although it does not appear from the court documents in the record that the applicant served any prison time for his offenses, these offenses constitute misdemeanors for purposes of determining the applicant's eligibility for adjustment to permanent status under the LIFE Act.

As the applicant has not submitted sufficient credible evidence of residency, he therefore has not met his burden of proof in showing that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. As noted above, the applicant is also ineligible for adjustment to permanent resident status under the LIFE Act for conviction of three or more misdemeanors in the United States. Accordingly, the applicant has not established eligibility to adjust status to Legal Permanent Resident status under section 1104 of the LIFE Act.

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