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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
MSC 02 050 60436

Office: NEW YORK

Date: SEP 07 2007

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. 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, 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 had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

Counsel for the applicant timely filed a Form I-290B, Notice of Appeal to the Administrative Appeals Unit, in which he asserted that the applicant submitted significant documentation in support of his appeal. Counsel indicated on the Form I-290B a brief and/or additional evidence would be submitted within 30 days of filing the appeal. As of the date of this decision, however, more than three years after the appeal was filed, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

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. Section 1104(c)(2)(B) of the LIFE Act; 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 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.

Although Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

On a form to determine class membership, which he signed under penalty of perjury on November 9, 1990, the applicant stated that he first arrived in the United States in June 1981. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury on

September 26, 1990, the applicant stated that he left the United States once during the requisite period, from December 1987 to January 1988, when he visited his family in Mali, and that he lived at the following addresses: [REDACTED], from June 1981 to March 1987, and at [REDACTED] from April 1987 to September 1989. The applicant stated that he worked as a self-employed salesman throughout the qualifying period.

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

1. A September 25, 1990 affidavit from [REDACTED] in which he stated that the applicant lived at [REDACTED] from June 1981 to March 1987. The affiant stated that he met the applicant at his bookkeeper's. The affiant did not state the date that he met the applicant or state the basis of his knowledge of the applicant's residency in the United States.
2. A January 10, 1989 letter from the [REDACTED] signed by [REDACTED] "public information." The letter stated that the applicant had been a member of the Muslim Community since January 1982. The letter is a photocopy, with only the applicant's name and the signature of Mr. [REDACTED] included as originals. The letter does not indicate the source of the information contained in the letter and does not indicate the applicant's address at the time of his membership in the masjid as required by 8 C.F.R. § 245a.2(d)(3)(v).
3. A January 2, 2004 sworn letter from the [REDACTED] signed by [REDACTED] who identified herself as the manager. [REDACTED] verified that the applicant had lived at the hotel since October 1986 in room [REDACTED]. We note that although the district office "verified" this information, the applicant did not state on his Form I-687 application that he had lived at this address. Further, the information is inconsistent with that provided in the affidavit of [REDACTED] and with other statements by the applicant, as discussed further below.
4. A December 29, 2003 sworn letter from [REDACTED] in which she stated that she had known the applicant since November 1986, and that she met him at the African Market.
5. A September 25, 1990 affidavit from [REDACTED] in which he stated that the applicant resided with him at [REDACTED] from April 1987 to September 1989. The form affidavit indicated that the rental receipts and household bills were in the name of the affiant, and that the applicant contributed to the payment of rent and household bills. [REDACTED] also executed another affidavit of the same date, in which he stated that he met the applicant at the Harlem Market where the applicant was a vendor. As noted by the director, [REDACTED] affidavits conflict with the letter from the [REDACTED].
6. An October 22, 1991 sworn statement from Soumahoro Adama, in which he stated that he and the applicant left the United States on December 31, 1987 to visit a friend in Montreal, Canada, and that they returned to New York on January 6.
7. A January 5, 2004 sworn statement from [REDACTED] in which he stated that he sold a sofa to the applicant in May 1988. However, in a May 25, 2004 telephone call, [REDACTED] denied making this sale to the applicant.

The applicant also submitted a January 10, 2004 sworn statement from his uncle, [REDACTED]. However, the applicant's uncle did not state when the applicant arrived in the United States or that he had resided here throughout the requisite period.

The record reflects that the applicant was issued a passport in Mali on March 18, 1985, and received a B-2 nonimmigrant visitor's visa on September 15, 1989. A copy of a Form I-94 reflects that the applicant entered the United States pursuant to that visa on October 7, 1989. On a Form G-325A, which he signed under penalty of perjury on November 13, 2001, the applicant stated that he had lived in Mali until October 5, 1989. Further, he stated that he lived in number [REDACTED] from February 1991, and that he moved into number 623 in August 1998.

In response to the director's Notice of Intent to Deny (NOID) dated February 6, 2004, the applicant submitted the following additional documentation:

1. A copy of a February 18, 2004 letter from [REDACTED] who identified himself as the general manager of the [REDACTED] and verified that the January 2, 2004 letter from [REDACTED] was a "valid rental history letter." However, this information is again inconsistent with the information that the applicant provided on his Form I-687 application and is also inconsistent with the information he provided on his Form G-325A, on which he stated that he lived in Mali until October 1989, and that he resided at [REDACTED] from February 1991. The applicant submitted no documentary evidence, such as a lease agreement, rent receipts, or similar documentary evidence to corroborate his residence at this address. 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 unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).
2. A copy of a May 3, 1988 sales receipt from [REDACTED] with the applicant's name and address listed as [REDACTED].
3. Copies of envelopes addressed to the applicant in the United States. However, each envelope contains two dated postal marks that either do not match or are illegible. It is therefore unclear as to whether the envelopes contained correspondence mailed to the United States during the requisite period.

In his March 2, 2004 letter accompanying the applicant's response to the NOID, counsel stated that the director's contention in the NOID that:

[The applicant's] claims that he resided with [REDACTED] contradict[] confirmation from the [REDACTED] that he resided there during that period is also inaccurate. [The applicant] had residences in both places. [He] was at the time, in the African Art business. Because he required additional space for his business and also for residential purposes, he resided at both places, using his residence at the hotel as his business too. Thus, it is plausible for the Hotel and [REDACTED] to both confirm that he resided in both places.

The applicant stated on his Form G-325A that he was a street vendor, and although one person confirmed that she bought art from the applicant, nothing in the record supports counsel's assertions that the

applicant was engaged in the "African art business" or that he conducted his business at other than the Harlem Market. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Given the unresolved inconsistencies regarding the applicant's place of residency and his statement on his Form G-325A that he lived in Mali until 1989, it is concluded that the applicant has not established by a preponderance of the evidence that he continuously resided in the United States in an unlawful status during the requisite period.

The record reflects that the applicant is the beneficiary of a Form I-130, Petition for Alien Relative, (MSC 05 247 10430) filed on May 15, 2005. The record does not reflect that the director has issued a final decision on this petition, and it is not at issue in this decision.

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