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U.S. Citizenship  
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Services

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FILE:

MSC 02 244 60378

Office: NEW YORK CITY

Date: DEC 01 2008

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: 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 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.

On appeal the applicant asserts that the director did not properly evaluate the evidence in the record. The applicant asserts that he has provided sufficient evidence to establish that he continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

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 January 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on June 1, 2002.

In a Notice of Intent to Deny (NOID) dated May 5, 2004, the director cited the sworn statement completed by the applicant at his LIFE legalization interview on May 4, 2004, in which the applicant stated that he left the United States in January 1986 to go back to Senegal for six months and then went to Italy for three and a half years, and that he returned to the United States in December 1989 with a B1/B2 visa. Based on this information the director concluded that the applicant had not maintained continuous residence and physical presence in the United States during the requisite period for LIFE legalization. The applicant was granted 30 days to submit additional evidence.

The applicant did not respond to the NOID and on March 30, 2007, the director issued a Notice of Decision denying the application based on the grounds stated in the NOID.

On appeal, the applicant asserts that the director failed to properly consider the evidence in the record. The applicant asserts that the director misinterpreted his response to the question of his absences from the United States. The applicant submits a copy of his Form I-687 (application for status as a temporary residence) dated May 23, 1990, indicating that he was absent from the United States two times in early 1987 and in late 1989, as opposed to one long absence from 1986 to 1989.

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).

The 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 resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1, 1982 and resided in an unlawful status during the requisite period consists of the following:

- A statement from the clerk at [REDACTED] in New York City, dated February 13, 1990.
  - A statement from the clerk of [REDACTED] in New York City, dated November 22, 1990.
- A statement by [REDACTED] a public information official of Masjid Malcolm Shabazz in New York City, dated May 8, 1990.

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.

The file contains documentation that calls into question the veracity of the applicant's claim to have entered the United States in January 1981 and resided continuously in an unlawful status through May 4, 1988. On his Form I-687 (application for status as a temporary resident) dated May 23, 1990, the applicant indicated that he was absent from the United States on two occasions in the 1980s: from January 1987 to February 1987 and from November 1989 to December 1989. On both occasions, the applicant stated that he traveled to Senegal to visit his family. The applicant did not indicate any other absences from the United States in the 1980s. At his LIFE legalization interview on May 4, 2004, however, the applicant submitted a sworn statement attesting that he left the United States in January 1986, traveled to Senegal and Italy, and that he returned to the United States in December 1989 with a B1/B2 visa. In the file is a

copy of the applicant's Senegalese passport with an issue date of December 28, 1988, in Dakar, Senegal. The passport contains a visa issued at the Belgian Embassy in Dakar, Senegal, on January 18, 1989. The passport shows that the applicant departed Dakar, Senegal, on January 26, 1989. Also in the passport is a B-1/B-2 visa issued to the applicant at the United States Embassy in Rome, Italy, on November 24, 1989, with which the applicant entered the United States through New York on December 2, 1989. The applicant has not provided evidence of how he procured the passport and the visas in Dakar, Senegal and Rome, Italy, at a time he was allegedly residing in the United States.

Thus, the information in the passport and the sworn statement of May 4, 2004, contradict the information provided by the applicant on his Form I-687 and his assertions on appeal that he left the United States twice in the 1980s as opposed to one extended absence. 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 without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

In the NOID issued on May 5, 2004, the director cited the contradictions in the record and granted the applicant the opportunity to submit additional evidence. He did not do so. On appeal the applicant simply disavows his sworn statement of May 4, 2004, and does not address the conflict between his passport stamps in late 1988 and early 1989 and his claim not to have left the United States between February 1987 and November 1989.

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period for LIFE legalization. For someone claiming to have lived in the United States since 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary or secondary evidence during the following seven years through May 4, 1988.

The letter from [REDACTED] of Masjid Malcolm Shabazz in New York City, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The letter from [REDACTED], dated May 8, 1990, vaguely stated that the applicant has been a member of the Muslim Community since January 1981, but did not state where the applicant lived at any point in time between 1981 and 1988, did not indicate how and when he met the applicant, and did not state whether the information about the applicant's membership was based on his personal knowledge, the mosque's records, or hearsay. Since the letter did not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes

that the letter has little probative value. It is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The letters from [REDACTED], dated February 13, 1990, and from [REDACTED], dated November 22, 1990, were signed by individuals carrying the title of "clerk" who attest to the applicant's residence at those two hotels from January 1981 to June 1984, and from June 1984 to November 1989, respectively. Although the letters are from two different hotels they have identical wording and formats. The signatories of the letters do not identify the source of their information, such as specific business records, about the applicant's residence at the hotels. Nor are the letters supplemented by copies of rental receipts, utility bills, or other documentation to show that the applicant actually resided at the addresses during the years indicated. In view of these substantive deficiencies, the letters have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes 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, 8 U.S.C. § 245A(a)(2)(A). 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.