

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2

FILE:



Office: NEW YORK CITY

Date: DEC 29 2008

consolidated herein]
MSC 03 217 61911

IN RE: Applicant:



APPLICATION:

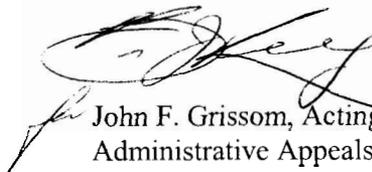
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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 because the applicant failed 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, 1998.

On appeal, counsel asserts that an extended absence from the United States cited in the decision was actually less than 45 days in length, and therefore did not interrupt the applicant's continuous residence in the United States during the requisite period for LIFE legalization.

To be eligible for adjustment to permanent resident status under the LIFE Act an applicant must establish his or her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and 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.”

“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.” 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.” 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 Mali who claims to have lived in the United States since 1981, filed his application for permanent resident status under the LIFE Act (Form I-485) on May 5, 2003.

In a Notice of Intent to Deny (NOID), issued on September 14, 2007, the director noted the applicant’s testimony at his LIFE legalization interview on August 21, 2007, that he had entered the United States from Canada without inspection in June 1981 and, during the statutory period of January 1, 1982 to May 4, 1988, traveled outside the United States just once – a trip to Mali from November 5 to December 16, 1987. The director also cited U.S. Citizenship and Immigration Services (USCIS) records indicating that the applicant was issued a visa in Mali on November 21, 1986, with which he was admitted to the United States on December 16, 1997 – more than a year later – which appeared to interrupt the applicant’s continuous residence in the United States since the applicant had shown no “emergent reasons” for the duration of his absence. The applicant was granted 30 days to submit additional evidence.

In response to the NOID counsel asserted that the director erred in stating that the applicant’s **visa was issued on November 21, 1986. Counsel submitted a photocopied page from his passport with a stamp from the U.S. Embassy in Libreville, Gabon, dated November 19, 1987, granting him a B-1/B-2 visa valid until February 18, 1988.**

On September 27, 2007, the director issued a Notice of Decision denying the application. The director restated her finding that the applicant's visa was issued on November 21, 1986 in Mali and that he entered the United States therewith on December 16, 1987 – more than a year later. The director indicated that the length of the applicant's absence from the United States, with no evidence that emergent reasons were the cause, interrupted his continuous residence in the United States and made him ineligible for legalization under the LIFE Act.

On appeal counsel reiterates his claim that the applicant's visa was issued on November 19, 1987, which means that the applicant's admission to the United States on December 16, 1987 – just 27 days later – did not interrupt his continuous residence in the United States.

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 record includes photocopied pages of the applicant's old passport which show that it was issued by the Malian Embassy in Libreville, Gabon, on November 21, 1986,¹ and that a B-1/B-2 visa was issued to the applicant by the U.S. Embassy in Libreville on November 19, 1987. Thus, counsel is correct insofar as the director erred in stating that the applicant's "visa from Mali" was issued on November 21, 1986. But the evidence in the passport – which includes numerous stamps indicating extensive travel by the applicant to and from Gabon, though not involving the United States – also supports the director's conclusion that the applicant was absent from the United States between November 21, 1986, the date his passport was issued in Gabon, and December 16, 1987, his date of entry into the United States on a B-1/B-2 visa.

It is undisputed that a year-long absence from the United States exceeds the 45-day maximum for a single absence, as well as the 180-day maximum for aggregate absences, prescribed in the regulation at 8 C.F.R. § 245a.15(c)(1). An absence of such duration interrupts an alien's continuous residence in the United States unless he or she can show that a timely return to the United States could not be accomplished due to emergent reasons. While the term "emergent reasons" is not defined in the regulations, the Board of Immigration Appeals has held that *emergent* means "coming unexpectedly into being." *Matter of C-*, 19 I&N Dec. 808, 810 (Comm. 1988).

¹ This information is confirmed in a statement by the First Counsel of the Permanent Mission of Mali to the United Nations, dated February 4, 1992.

Though his passport clearly shows that it was issued in Libreville in November 1986, the applicant has not even acknowledged being in Gabon at that time. 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). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.* The applicant has offered no explanation for the issuance of his passport in Gabon at a time he claims to have been resident and physically present in the United States. Nor has the applicant submitted any evidence that "emergent reasons" prevented a return from Gabon to the United States within 45 days after the issuance of his passport.

The AAO agrees with the director, therefore, that the applicant's absence from the United States from November 1986 to December 1987 interrupted his continuous residence in the United States during the requisite period for LIFE legalization, which makes him ineligible for adjustment of status under the LIFE Act.

Beyond the decision of the director, the AAO determines that the applicant has not established his continuous residence in the United States at any time prior to December 16, 1987 – the date of his entry on a B-1/B-2 visa. The only evidence of the applicant's residence in the United States before December 16, 1987 is a series of letters and affidavits in 1992 from individuals who claim to know personally, or have information, that the applicant resided in the United States at a succession of addresses in New York City from 1981 to the present (1992). The letters and affidavits all have minimalist or fill-in-the-blank formats with little input by the authors. For the amount of time they claim to have known the applicant, the authors provide remarkably few details about his life in the United States, such as where he worked, and the nature and extent of their interaction with him during the 1980s. Nor are the letters and affidavits supplemented by any documentary evidence – such as letters, photographs, or other records – demonstrating a relationship between the applicant and any of the authors during the 1980s.

For the reasons discussed above, the AAO concludes that the affidavits and letters have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States before December 16, 1987. On this ground as well, therefore, the application for LIFE legalization must be denied.

Based on the foregoing analysis of the record, the AAO agrees with the director that the applicant has failed to establish that he entered the United States unlawfully before January 1, 1982, and resided continuously in the United States in an unlawful status 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.