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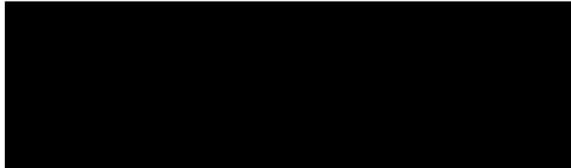
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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Office: Denver

Date: FEB 20 2008

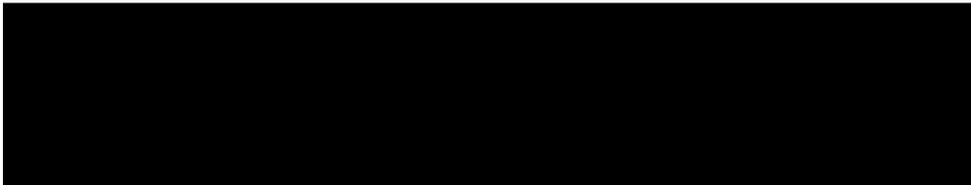
IN RE:

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:



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, Denver, Colorado. The case was subsequently remanded by the Administrative Appeals Office (AAO) in order to incorporate the original application into the record of proceedings. The original application was placed into the record and the case has been returned to the AAO to continue the adjudication of the appeal. The appeal will be dismissed.

The district director determined that the applicant had failed to assist the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services of CIS) as required under 8 C.F.R. § 245a.18(e), because he had not provided requested court documents relating to his criminal history. The district director further determined that the applicant had failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act. The district director based this determination in part on entry and exit stamps contained in his Malian passport as well information provided by the applicant in a Form I-589 Request for Asylum in the United States, which was submitted to the Service on January 27, 1989. The district director concluded that the applicant was not eligible to adjust to permanent residence under section 1104 of the LIFE Act, and, therefore, denied the Form I-485 LIFE Act application.

On appeal, the applicant reaffirmed his claim of continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant indicated that he attempting to obtain further documentation to support his claim of residence in this country for the requisite period as well as documentation reflecting the disposition of criminal charges filed against him for his arrest on August 10, 1991. The record shows that counsel subsequently submitted documents relating to the applicant's criminal history.

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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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).

Declarations by an alien that he or she has not been the recipient of public cash assistance and/or has not had a criminal record are subject to verification by the Service or its successor CIS. The alien must agree to fully cooperate in the verification process. Failure to assist the Service or its successor CIS in verifying information necessary for proper adjudication may result in denial of the application. 8 C.F.R. § 245a.18(e)

The first issue to be examined in this proceeding is whether the applicant has submitted sufficient documentation relating to his criminal history to determine that he is admissible to the

United States under the provisions of section 212(a) of the Act as required by 8 C.F.R. § 245a.12(e).

The applicant submitted a copy of New York City Police Department Arrest Report that reflects he was arrested under the name "[REDACTED]" on August 10, 1991 and charged with a felony violation of section 155.30 of the New York Penal Code, Grand Larceny in the Fourth Degree, a felony violation of section 165.45 of the New York Penal Code, Criminal Possession of Stolen Property in the Fourth Degree, and a misdemeanor violation of section 165.15 of the New York Penal Code, Theft of Services.

Subsequent to the filing of the applicant's appeal, counsel submitted the results of a criminal history records search conducted by the Criminal History Records Search Unit of the Unified Court System for the State of New York on October 31, 2003. A review of these results shows that there were no records found relating to a criminal conviction or pending prosecution involving the applicant under his actual name or the name "[REDACTED]". Therefore, the applicant has submitted sufficient documentation relating to the disposition of criminal charges arising from his arrest on August 10, 1991 to determine that he is admissible to the United States under the provisions of section 212(a) of the Act as required by 8 C.F.R. § 245a.12(e). Consequently, the applicant must be considered to have overcome this particular basis of the district director's denial.

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 and 8 C.F.R. § 245a.11(b).

"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.

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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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).

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 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of information contained in the attestation.

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.

The next issue to be determined in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Act on April 13, 1991. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed [REDACTED] in New York, New York from August 1981 to May 1985 and [REDACTED] in New York, New York from May 1985 to June 1989. Further, at part #34 of the Form I-687 application where applicants were asked to list all absences from the

United States since entry, the applicant listed an absence of twenty-one days from July 3, 1987 to July 24, 1987 when he traveled to Canada to visit a friend.

In support of his claim of continuous residence in the United States from prior to January 1, 1982, the applicant submitted a letter dated November 20, 1990, containing the letterhead of the [REDACTED] at [REDACTED] New York, NY 10026. The letter is signed by [REDACTED] who listed his position at this institution as "Public Information." [REDACTED] stated that the applicant is member of the Muslim community who has been attending prayer services at the Masjid since September 1981. However, [REDACTED] failed to attest to any of the applicant's addresses of residence during the entire period that the applicant was affiliated with this religious organization beginning in September 1981 as required under 8 C.F.R. § 245a.2(d)(3)(v).

The applicant included an affidavit containing the letterhead of the [REDACTED] at [REDACTED] and [REDACTED] in New York, New York that was dated November 20, 1990. The affidavit is signed by [REDACTED] who listed his position at the hotel as manager. [REDACTED] stated that the applicant resided at this establishment, sharing rent with a roommate from August 1981 to May 1985. Nevertheless, [REDACTED] failed to attest to the applicant's residence in the United States after May 1985 through May 4, 1988.

The applicant provided an affidavit containing the letterhead of the [REDACTED] at [REDACTED] in New York, New York that was dated November 21, 1990. The affidavit is signed by [REDACTED] who listed his position at the hotel as manager. [REDACTED] declared that the applicant lived at this hotel with a friend who shared rent from May 1985 to June 1989. However, [REDACTED] failed to provide any testimony relating to the applicant's residence in the United States from prior to January 1, 1982 up through May 1985.

The applicant submitted an affidavit signed by [REDACTED] who noted that he first met the applicant selling socks and T-shirts on [REDACTED] in 1981. [REDACTED] asserted that his acquaintance with the applicant provided him with the knowledge that he had resided in this country since August 1981 through the date the affidavit was executed on November 28, 1990. [REDACTED] provided a listing of the applicant's residences for that period from August 1981 through November 28, 1990 that matched that listing provided by the applicant at part #33 of the Form I-687 application.

The applicant included an affidavit that is signed by [REDACTED]. [REDACTED] stated that he met the applicant at an African party on [REDACTED] and [REDACTED] in 1981. [REDACTED] provided a listing of the applicant's addresses of residence for that period from August 1981 through November 28, 1990, the date the affidavit was executed, that corresponded to those addresses of residence listed by the applicant at part #33 of the Form I-687 application. [REDACTED] indicated that his acquaintance with the applicant was the basis of his knowledge that the applicant had resided in this country since August 1981.

The applicant submitted two affidavits signed by [REDACTED]. [REDACTED] asserted that he traveled to New York City on July 3, 1987 in order to transport the applicant back to his home in Montreal, Canada. [REDACTED] stated that he had invited the applicant to his home because the applicant wanted to look for work in Canada. [REDACTED] contended that the applicant stayed at his home for three weeks before he gave the applicant a ride back to New York City on July 24, 1987. However, the affiant failed to provide sufficient details and specific verifiable information relating to the applicant's residence in this country for any portion of the requisite period.

Subsequently, on January 16, 2002, the applicant submitted his Form I-485 LIFE Act application to the Service. The applicant provided copies of previously submitted documentation but failed to include any new evidence in support of his claim of residence in the United States for the requisite period.

A review of the record revealed that the applicant possessed a separate Administrative file or A-file, [REDACTED] which contained a Form I-589, Request for Asylum, which the applicant submitted to the Service on January 27, 1989. The record reflects that the applicant's Form I-589 asylum application and supporting documents have been consolidated into the current record of proceedings. At part #14 of Form I-589 asylum application where applicants were asked to provide information relating to their education, the applicant testified that he attended ECICA, a business school, from October 1981 to June 1986 when he completed his studies and received a diploma. On the Form G-325A, Record of Biographic Information, which accompanied his Form I-589 asylum application, the applicant indicated that he began residing in the United States in East Orange, New Jersey in February 1988 with no prior residence in the United States for at least five years prior to such date. In addition, the applicant included photocopied pages from his Malian passport with the Form I-589 asylum application. These passport pages contain numerous visa stamps, entry stamps and exit stamps demonstrating that the applicant traveled extensively beginning in April 10, 1986 from his native country of Mali to the Ivory Coast, Gabon, Togo, Nigeria, Senegal, Burkina Faso, and France, before entering the United States with a B-1 visitor's visa at New York, New York on February 17, 1988. The record shows that the applicant signed the Form I-589 asylum application thereby certifying under the penalty of perjury that the information contained in such application and evidence submitted with it was true and correct.

A review of the website at <http://portal.unesco.org/education/> revealed ECICA or the Ecole Central pour l'Industrie, le Commerce et l'Administration is a school in Bamako, Mali that was established in 1969. The fact that the applicant himself testified that he was attending school in Bamako, Mali from October 1981 through June 1986 on the Form I-589 asylum application and the numerous stamps in his Malian passport reflecting extensive travel prior to his entry in this country on February 17, 1988 negated his claim that he resided in the United States from prior to January 1, 1982 through May 4, 1988.

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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and

attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

On July 18, 2003, the district director issued a notice of intent to deny to the applicant informing him of CIS's intent to deny his application. Specifically, the district director determined that the photocopied pages of the applicant's Malian passport demonstrated that he was absent from the United States in excess of the forty-five day limit for a single absence and one hundred eighty days in the aggregate for all absences from this country during the requisite period pursuant to 8 C.F.R. § 245a.15(c)(1). The applicant was granted thirty days to respond to the notice.

The applicant submitted a statement in which reaffirmed his claim of continuous residence in the United States since August 1981. The applicant asserted that it was his brother who had procured his Malian passport in 1986 and paid a businessman named [REDACTED] to place the numerous stamps in his passport. The applicant claimed these stamps were false but that this was done to make it easier to obtain a visa to enter the United States. The applicant declared that he left New York City on February 10, 1988 to travel to the Ivory Coast and pick up his visa and passport and that he then subsequently utilized these documents to reenter this country in New York City on February 17, 1988. However, the applicant failed to submit any independent evidence to substantiate the claims made in his statement.

The district director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status for the requisite period and, therefore, denied the Form I-485 LIFE Act application on September 24, 2003. In the notice of denial, the district director noted that the applicant himself had testified that he attended ECICA, a business school in his native country of Mali, from October 1981 to June 1986 on the Form I-589 asylum application.

On appeal, the applicant reiterates his claim of continuous residence in the United States from August 1981 through May 4, 1988. The applicant repeats the claims that he put forth in his response to the notice of intent to deny regarding the manner in which his Malian passport and the numerous stamps contained therein were procured. The applicant contends that he is attempting to gather evidence to demonstrate that his passport was procured in the manner he claimed. However, as of the date of this decision, the applicant has failed to submit any documentation to reflect that his passport and travel stamps were obtained as claimed. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The absence of sufficiently detailed supporting documentation and the fact that the applicant himself provided conflicting and contradictory testimony in his Form I-589 asylum application and its supporting documents all seriously undermine the credibility of both his claim of residence for the period in question and the credibility of the documents submitted in support of

such claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E-- M--*, 20 I&N Dec. 77.

Given the applicant's reliance upon documents with minimal probative value and the contradictory nature of his own testimony, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis

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