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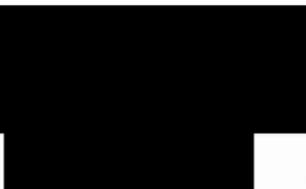


U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK

Date:

JAN 31 2006

MSC 01 332 60143

IN RE:

Applicant:



PETITION:

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 PETITIONER:



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. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant submitted insufficient evidence to credibly document his continuous residence in an unlawful status since before January 1, 1982 to May 4, 1988 and his continuous physical presence in the United States from November 6, 1986 to May 4, 1988. Specifically, the director found that the evidence in the record demonstrated that the applicant was issued a passport in Dakar, Senegal on August 12, 1987, and that he re-entered the United States on May 25, 1988. Noting that this extended absence constituted a break in his continuous residency, the director found the applicant ineligible for the benefit sought.

On appeal, counsel for the applicant alleges that the director erred by concluding that the applicant's visit to Senegal began in August 1987. Counsel alleges that sufficient documentation exists to show that he was not in Senegal in August 1987, and that he did not travel there until April 1988 after the death of his father. Counsel concludes by claiming that this visit outside of the United States did not interrupt his continuous residency, and submits additional documentary evidence to support the allegation that the applicant continuously resided in the United States during the requisite period.

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).

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).

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 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish his continuous unlawful residence and continuous physical presence in the United States for the requisite periods. Here, the submitted evidence consists of the applicant's statements on Form I-687, Applicant for Status as a Temporary Resident, which he signed under penalty of perjury. On this form, the applicant claimed that he departed the United States for Senegal in March 1988 to visit relatives, and returned in May 1988. On his affidavit for class membership, which he also signed under penalty of perjury on May 17, 1990, he claimed that he departed the United States on March 30, 1988 to visit relatives, and returned on May 25, 1988.

The record also includes a copy of his Senegalese passport, which indicates that it was issued on August 12, 1987 in Dakar. During his interview under oath on April 21, 2004, the applicant claimed that he had received his passport in Senegal on August 12, 1987. The passport also includes an entry stamp dated May 25, 1988. Therefore, the applicant's date of re-entry into the United States is not in dispute.

Upon viewing the date and place of issuance of the passport, coupled with the applicant's testimony in his interview, the director issued a Notice of Intent to Deny (NOID) the application on April 23, 2004. The director noted that based on the applicant's statement that he received his passport on August 12, 1987 in Senegal, and the return stamp of May 25, 1988, it appeared that the applicant's absence exceeded the maximum period allowed and thus rendered him ineligible for permanent residency. The applicant was afforded thirty days to overcome this objection and provide additional evidence.

Counsel submitted a request for additional time to submit evidence on May 18, 2004. In this response, he claimed that the applicant's statements during his interview were misunderstood by the director. Counsel indicated that although the passport was issued in Senegal in August 1987, the applicant did not receive it until he ventured to Senegal in the spring of 1988. In a second response received on July 27, 2004, counsel submitted a copy of the applicant's father's death certificate, showing the date of death in Senegal as April 10, 1988. Finally, the applicant submitted an affidavit from [REDACTED], friend of the applicant's father, who claims that she accompanied the applicant's father to the local police in August 1987 to retrieve the applicant's passport. She also claims that the applicant did not arrive in Senegal until 1988 after his father had passed away, at which time he had been issued emergency travel documents from the Senegalese government.

On September 1, 2005, the director denied the application, finding that the applicant had not overcome the grounds for denial in the evidence submitted. On appeal, counsel for the applicant alleges that the director erred by drawing conclusions about the applicant's date of departure from the United States, and claims that the applicant did not travel to Senegal until after his father's death in April 1988. Because the nature of his departure was for emergent reasons, counsel asserts that this brief trip did not break his continuous residency.

Upon review, the AAO concurs with the director's findings.

The record contains no documentary evidence to corroborate the applicant's claims. While it can be concluded that the applicant's date of re-entry to the United States was May 25, 1988, as evidenced by the entry stamp in his passport, the record contains numerous conflicting statements regard the applicant's date of departure from the United States.

The record contains substantial inconsistencies that have not been sufficiently explained. Specifically, the record contains the following documentation:

- (1) Applicant's statement on Form I-687, Applicant for Status as a Temporary Resident, which he signed under penalty of perjury. On this form, the applicant claimed that he departed the United States for Senegal in March 1988 to visit relatives.
- (2) Applicant's affidavit for class membership, also signed under penalty of perjury on May 17, 1990, in which he claims that he departed the United States on March 30, 1988.
- (3) Applicant's statements in his April 21, 2004 interview, during which he claimed to received his passport in Senegal on August 12, 1987.
- (4) Passport showing issuance in Dakar, Senegal on August 12, 1987.
- (5) Death certificate for [REDACTED], applicant's father, showing date of death as April 10, 1988.
- (6) Affidavit of [REDACTED] friend of applicant's father, claiming she accompanied applicant's father to pick up his passport in Senegal in August 1987. She also claims that the applicant did not arrive in Senegal until *after* his father's death in April 1988.
- (7) Statement by counsel on appeal, claiming that the applicant did not travel to Senegal until after his father's death on April 10, 1988.

The record, therefore, contains three different dates of departure for the applicant. The applicant's own assertions say he departed the United States on March 30, 1988. Counsel and [REDACTED], however, claim that he did not arrive in Senegal until after his father's death, which was on April 10, 1988. Finally, applicant indicated in his interview that he received his passport in Senegal in August 1987.

The troubling issue regarding these inconsistencies is the fact that all statements in question, except for the assertions of counsel on appeal, were provided under oath and under the penalty of perjury. While a minor error with regard to recalling specific dates from years past is not deemed uncommon or fatal to an application, the continued inconsistencies and conflicting testimony can not be overlooked. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The director noted that the death certificate of the applicant's father, submitted in response to the NOID, was insufficient to show his exact date of departure from the United States. The AAO notes that on Form I-687 and again in the class affidavit, the applicant asserts that he departed the United States in March 1988 "to visit relatives." No mention is made of his father's health and whether the trip was emergent. The applicant's statements on these forms contradict the statements of counsel and [REDACTED] who claim that the applicant did not depart the United States until after his father's death, which was on April 10, 1988. Nevertheless, the fact remains that the exact date of the applicant's departure cannot be definitively determined.

In the event that the applicant in fact was in Senegal in August 1987 and remained until May 25, 1988, the applicant would have been absent from the United States for more than 45 days during the requisite period, and would be ineligible to adjust status to that of a permanent resident. In the event that the applicant's claim that he departed in March 1988, or more specifically, on March 30, 1988, and did not return until May 25, 1988, is correct, this too would render him ineligible, since the total absence would amount to 56 days. While a family emergency would generally be an accepted reason for a delayed return that could not be accomplished within the prescribed period, the fact that there are numerous inconsistencies in the record regarding the date of departure renders it impossible to determine whether the applicant in fact departed on March 30, 1988 as a result of his father's ill health, or whether he departed on March 30, 1988 for unrelated reasons. No claim has been made in the record that the applicant was summoned to Senegal for a family emergency, nor is there a claim that his return could not be accomplished in the allotted time period for emergent reasons. Nevertheless, the numerous inconsistent statements provided by the applicant and [REDACTED] under oath, and the unsupported statements of counsel on appeal, undermine the credibility of the application as a whole. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

According to the regulation at 8 C.F.R. § 245a.15(c)(1), no single absence from the United States can exceed forty-five days without interrupting continuous residency unless for emergent reasons, return to the United States within the required period is prohibited. If the applicant's statement in his April 21, 2004 interview is in fact true, he would have been absent from the United States for close to 270 days and his trip would have been initiated for non-emergent reasons. Since there is insufficient evidence to disprove the applicant's claim in the interview, and no documentary evidence to support a finding that a brief trip in spring 1988 was for emergent reasons, the AAO must conclude that continuous residency during the requisite period has not been established.

Given the absence of contemporaneous documentation and unresolved inconsistencies in the record, it is concluded that the applicant has failed to establish, by a preponderance of evidence, that he continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

Beyond the decision of the director, it is noted that the applicant has likewise failed to submit credible evidence to support a finding that he entered the United States prior to January 1, 1982 and resided continuously in an unlawful status through the end of the requisite period. The applicant submits several

affidavits that omit critical information pertaining to the nature of the information attested to, and the record is devoid of any documentary evidence, such as rent receipts, payroll records, or other such information to support the claim that the applicant was residing in the United States in an unlawful status. For this additional reason, the application must be denied.

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