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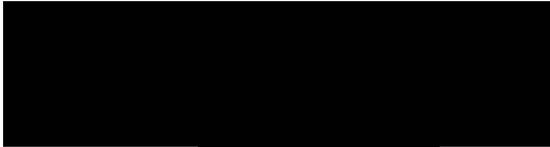
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, D.C. 20529



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 01 272 60227

Office: NEW YORK Date:

MAY 13 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. 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.

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 district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, the applicant asserts that he entered the United States on October 18, 1991, and has met his burden of proof to establish eligibility for the benefit being sought.

The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. Section 1104(c)(2)(B)(i) 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 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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

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

- A Senegalese national identification card issued on September 7, 1983.
- An affidavit from [REDACTED] of Bronx, New York, who indicated that the applicant supported himself by working as a self-employed vendor from October 1981 to October 1990.
- A letter dated April 27, 1990, from [REDACTED] public information for [REDACTED] [REDACTED] in New York, New York, who indicated the applicant has been a member since October 1981, and attended Friday Jumah prayer services as well as other prayer services at the Masjid.

According to the interviewing officer's notes, at the time of his LIFE Interview on May 10, 2002, the applicant stated that he first entered the United States on July 21, 1988. The applicant also stated that he received his passport in Senegal on March 8, 1988, and his non-immigrant visa in Dakar (Senegal) on May 20, 1988.

On June 13, 2006, the director issued a Notice of Intent to Deny, which advised the applicant of his testimony taken at the time of his interview. The director determined that based on the applicant's testimony and the evidence submitted, the applicant had not demonstrated eligibility for the benefit being sought.

The applicant, in response, indicated that he first entered the United States on October 18, 1981, and has resided continuously through June 10, 1988, and that July 21, 1988, was the date he reentered with his non-immigrant visa. The applicant indicated that he did not state at the time of his interview that he first entered the United States on July 21, 1988.

The director, in denying the application, noted that in response to the notice of intent the applicant provided no evidence to corroborate his statement, and that at the time of the interview, the applicant did not appear to be under duress and was not pressured to testify anything but the truth. The director noted, "you were able to understand the interviewer, and we have no reason to believe that you did not answer all questions truthfully."

On appeal, the applicant asserts, in pertinent part:

I am not able to proof the date of entry because I was illegal and did not have any utility and any other bills under my name.

On June 10th, 1988 I let to my country and cam back in legally with a US visa on July 21, 1888.

I have no documented proof of being in this country but affidavits that were provided by people who knew me then.

On November 30th, 1989 I signed a document that said that I had been out of this county [sic] from February 20th, 1988 until March 12, 1988. Clearly I made a mistake in the days the correct days are June 10, 1988 until July 21, 1988. I went home to visit my family.

I have no further proof than the proof I have already provided to your offices. I would like to request a review on my application.

The statements of the applicant have been considered; however, the AAO does not view the documents submitted as substantive enough to support a finding that the applicant entered and began residing in the United States before January 1, 1982, through May 4, 1988.

██████████y attested to the applicant's self-employment during the requisite period, but failed to state the applicant's place of residence, provide any details regarding the nature of his relationship with the applicant or the basis for his continuing awareness of the applicant's residence.

The letter from ██████████ has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the affiant does not explain the origin of the information to which he attests. Further, the applicant did not list any affiliation with a religious organization during the requisite period at item 34 on his Form I-687 application.

Item 35 of the Form I-687 application requests the applicant to list *all* absences from the United States since January 1, 1982. The applicant indicated he was absent April 24, 1982, to May 25, 1982, August 16, 1984 to September 11, 1984, and February 20, 1988, to March 12, 1988. However, his national identification card and passport were issued to him in Senegal on September 7, 1983, and March 7, 1988, respectively, and the applicant now states that he was not outside of the United States during February and March 1988. No explanation has been provided how the passport and his identification card with his photo and fingerprint were issued to him during the time he claimed to be residing in the United States.

The applicant claimed that he has been in the United States since October 1981, but only provides affidavits from two affiants, whose authenticity has been called into question. The fact that the applicant did not provide any evidence such as rent receipts or affidavits from a landlord or acquaintances attesting to his residence in the United States during the requisite period raises questions of credibility regarding his purported 1981 entry into and continuous residence through May 4, 1988, in the United States.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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).

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black's Law Dictionary 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

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