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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

Office: NEW YORK

Date: MAY 27 2008

MSC 02 151 62139

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. The file has been returned to the National Benefits Center. 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.

A handwritten signature in black ink, appearing to read "R. Wiemann", written over a white rectangular background.

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 failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status for the requisite statutory time period.

On appeal, counsel for the applicant submits the applicant's sworn statement declaring that the applicant did not receive a copy of the July 18, 2006 Notice of Intent to Deny (NOID) the application or any request for additional evidence. The applicant states that he is appealing the decision because he did not receive the NOID and was not given an opportunity to respond to the NOID. The AAO reviewed the record in its entirety before issuing this decision.

Preliminarily, the AAO observes that the director mailed the NOID and the September 11, 2006 Notice of Decision, to the address the applicant confirmed as his correct address on the Form I-485 at the time of his March 22, 2004 interview. Thus, the applicant's claim that he did not receive the NOID, yet received the Notice of Decision, is found not credible.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – 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. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

"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. Although "*emergent reasons*" is a term that is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means "coming unexpectedly into being."

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 applicant submitted the Form I-485 that is the subject of this appeal on February 28, 2002. He was interviewed by an immigration officer on March 22, 2004. At the interview, the applicant stated that he entered the United States illegally in 1981 by boat at the port of New Orleans. The applicant stated that he left the United States in August of 1987 to return to Senegal to visit his sick grandmother and returned to the United States in October of 1987. The record also contains the applicant's written statement that he left the United States in August 1987 for a visit and vacation and returned to the United States in August 1987. The record includes a copy of a portion of the applicant's passport, number 14939/A-87, showing the passport was issued on July 27, 1987 in Dakar, Senegal. The passport also shows: that the U.S. Embassy in Dakar received a visa application on August 3, 1987; that a B-2 visitor's visa was issued on August 12, 1987, a departure stamp from Senegal on August 12, 1987 and an entry stamp into the United States on August 12, 1987; an arrival stamp into Senegal on August 27, 1987; and, a departure stamp from Senegal on October 27, 1987 and an arrival stamp into the United States on October 27, 1987. The information in the applicant's passport indicates that the applicant was not in the United States between August 27, 1987 and October 27, 1987, an absence of 60 days. Thus, the applicant's unlawful residence in the United States, even if established which it is not, was not continuous; but was instead broken by an absence in excess of a single absence of 45 days. The record does not include evidence that the applicant's return to the United States could not have been completed during the allowed period due to emergent reasons. For this reason, the applicant is ineligible for permanent resident status under Section 1104 of the LIFE Act.

In addition, the record does not include evidence establishing that the applicant entered the United States prior to January 1, 1982 and resided in the United States to May 4, 1988. The AAO has reviewed two employment letters included in the record:

An employment letter on the letterhead of Gasa Supermarket located in New York, New York, dated May 8, 1990, signed by the manager, [REDACTED]. Mr. [REDACTED] declares that the applicant worked at the company from October 1981 to July 1984 as a cashier.

- An employment letter on the letterhead of Ground Round Restaurant located in Yonkers, New York, dated May 8, 1990, signed by the manager, [REDACTED] Mr. [REDACTED] declares that the applicant worked at the company from July 1987 to December 1988 as a cook.

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. These letters/affidavits do not contain declarations that the employee information was taken from company records, or identify the location of such company records, or state whether such records are accessible or in the alternative state the reason why such records are unavailable, as required under 8 C.F.R. § 245a.2(d)(3)(i). Moreover, the letters/affidavits do not include any periods of lay off or establish employment in the United States for the entire requisite statutory time period. The record also includes information inconsistent with the applicant's claimed employment in the United States from October 1981 to July 1984 as the applicant's Form I-589, Application for Asylum and Withholding of Removal indicates that the applicant attended Lycee Madiaye Sall Secondary School in Dakar from October 1979 to June 1983. 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 AAO has also reviewed the form affidavits in the record regarding the applicant's presence in the United States. The form affidavits from: [REDACTED], dated February 23, 2002; [REDACTED] dated May 14, 1990; and [REDACTED] dated May 10, 1990, state generally that the affiants have known the applicant since 1981. These affidavits do not include proof that the affiants were in the United States during the requisite time period. In addition, the affiants do not provide any substantive details of the events and circumstances surrounding the initial relationship and subsequent interaction between the affiants' and the applicant that is sufficient to establish the applicant's continuous presence in the United States for the requisite periods. The AAO does not find these affidavits probative as these affidavits do not contain corroborating detail of the relationship and interaction of the affiants and the applicant.

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 beginning prior to January 1, 1982, through May 4, 1988. The record contains deficient affidavits and letters that are inconsistent with the applicant's statements. The applicant has not provided contemporaneous, credible evidence of his continuous unlawful residence in the United States prior to January 1, 1982 for the entire statutory period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for

the entire requisite period and the submission of inconsistent evidence seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, the inconsistencies in the record, and the documentation relating to the applicant's single absence from the United States for more than 45 days, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite statutory periods.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence to May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he 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.