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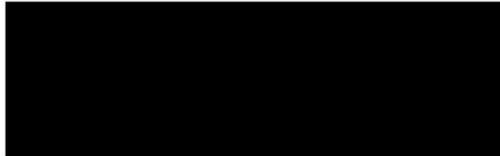
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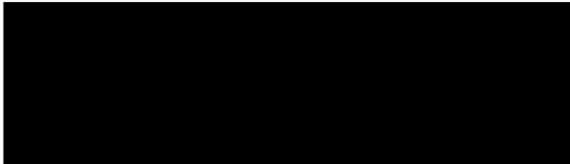
IN RE: Applicant:



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 E. Wiemann, 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 Milwaukee, Wisconsin. It is now on appeal before the Administrative Appeals Office (AAO). *The appeal will be dismissed.*

The director denied the application on the ground that the applicant failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel asserts that the director did not give proper weight to the evidence submitted by the applicant, and did not analyze its credibility.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their 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.” (Emphases added.)

“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.” (Emphasis added.) 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.” (Emphasis added.) 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 Senegal who claims to have lived in the United States since December 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on January 25, 2002. As evidence of his residence in the United States during the years 1981-1988, the applicant submitted the following document:

- An affidavit by [REDACTED] a resident of New York City, dated January 11, 2002, stating that she had personal knowledge that the applicant resided in the United States from November 1981 to the present (January 2002), that she first met the applicant in 1981 when the applicant was selling things in front of her work place, and that she has seen the applicant regularly over the years.

At his LIFE legalization interview on August 4, 2005, the applicant submitted one additional document as evidence of his residence in the United States in the 1980s:

An affidavit by [REDACTED] a resident of Madison, Wisconsin, dated August 2, 2005, stating that the applicant is his brother and lived with him in New York from March 1988 until February 1998.

In a Notice of Intent to Deny (NOID), dated November 30, 2005, the director indicated that the evidence of record was insufficient to establish that the applicant resided in the United States in continuous unlawful status from before January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

In response, the applicant submitted another affidavit from [REDACTED] dated December 14, 2005, stating that he and the applicant, his brother, came to the United States about the same time, lived together in New York, and that the first time the applicant went back to Senegal was in 1987 for a few weeks.

On December 20, 2006, the director issued a decision denying the application. The director indicated that the evidence of record failed to establish the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the director failed to determine the credibility of the affidavits and did not give proper weight to the evidence. Counsel did not submit any other documentation with the appeal.

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence 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, 1988. The AAO determines that he has not.

The affidavit by [REDACTED] dated January 11, 2002, has a minimalist, fill-in-the-blank format with very little input by the affiant. The information in the affidavit is superficial, and could just as easily have been provided by the applicant. While [REDACTED] claims to have known the applicant since November 1981, she provides almost no information about his life in the United States and her interaction with him over the years. Nor is the affidavit accompanied by any documentary evidence from the affiant – such as photographs, letters, and the like – of her personal relationship with the applicant in the United States during the 1980s. It is noted that while [REDACTED] claims to have known the applicant since November 1981, the applicant stated that he entered the United States in December 1981. In view of these substantive shortcomings, the AAO finds that the affidavit has little probative value. It is not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

In a similar vein, the two affidavits by [REDACTED], dated August 2, 2005 and December 14, 2005, fail to establish that the applicant entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through May 4, 1988. Though the affiant indicates that he and his brother came to the United States around the same time, he does not state when that was. Considering [REDACTED] claim that he and the applicant are brothers, the affidavits provide remarkably little information about the applicant's life in the United States, such as where he worked, and his interaction with the affiant over the years. The affidavits are not accompanied by any documentary evidence of the affiant's personal relationship with the applicant in the United States during the 1980s – such as photographs, letters, and the like – or any documentation of [REDACTED]'s own identity and residence in the United States during the period attested. Lastly, [REDACTED] does not provide any information about the applicant prior to 1987-88. In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Given the paucity of evidence in the record, the AAO concludes that the applicant has failed to establish 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, 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.