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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 163 61770

Office: NEW YORK

Date:

NOV 04 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:

Self-represented

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.

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 Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The 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 has been residing in the United States since April 1981. The applicant asserts that because his passport was issued in Dakar (Senegal) on October 29, 1986, does not mean that "it was delivered to me on that date."

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 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 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.

The record contains a copy of the applicant's Senegalese passport that was issued in Senegal on October 29, 1986. The passport reveals that on April 15, 1988, the applicant was issued a B-2 non-immigrant visa in Dakar, Senegal. The applicant departed Dakar on May 25, 1988 and lawfully entered the United States on the same day.

According to the interviewing officer's notes taken at the time of the applicant's LIFE interview, the applicant indicated that he entered the United States in April 1981 and resided at [REDACTED] Avenue for two to three years. He then resided on [REDACTED] in the Bronx for two years and moved to Parkchester in 1988. Regarding his employment, the applicant indicated that his first job was as a street vendor until 1983 and as a gypsy cab driver until 1989. He also worked at Hamburger Hardies.

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

- A letter dated June 18, 1990, from [REDACTED], owner of [REDACTED] Deli in Bronx, New York, who indicated that the applicant was in his employ from March 1981 to April 1985. The affiant asserted during the applicant's employment, "he rose from trainee in our delivery service to a responsible at the counter."
- A letter dated February 13, 1990, from an individual claiming to be a clerk at the Hotel Bryant in New York, New York and attesting to the applicant's residence at the hotel from December 1983 to April 1985. It is noted that the signature on the letter is indecipherable.
- An additional letter dated February 13, 1990, from an individual claiming to be a clerk at the Bryant Hotel in New York, New York and attesting to the applicant's residence at the hotel from May 1984 to September 1986. It is noted that the signature on this letter is also indecipherable.
- A letter dated February 13, 1990, from [REDACTED] clerk at Hotel Mansfield Hall in New York, New York, who attested to the applicant's residence at the hotel from May 1985 to April 1988.
- An additional letter dated February 13, 1990, from [REDACTED] clerk at Hotel Mansfield Hall in New York, New York, who attested to the applicant's residence at the hotel from October 1986 to February 1989.
- A letter dated February 22, 1990, from [REDACTED] clerk at Aberdeen Hotel, Inc., who attested to the applicant's residence at the hotel from January 1981 to November 1983.
- An additional letter dated February 22, 1990, from [REDACTED], clerk at Aberdeen Hotel, Inc., who attested to the applicant's residence at the hotel from January 1981 April 1984.
- A notarized affidavit from [REDACTED] of New York, New York, who attested to the applicant's residence in New York, New York since January 1981. The affiant asserted that he met the applicant at an African Market on [REDACTED]
- A letter dated May 10, 1991, from [REDACTED]-public information for [REDACTED] in New York, New York, who indicated the applicant has been a member since January 1981, and attended Friday Jumah prayer services as well as other prayer services at the [REDACTED]

On April 11, 2007, the director issued a Notice of Intent to Deny, which informed the applicant of his testimony taken at the time of his LIFE interview, where he indicated he had received his passport indicated in Dakar, Senegal on October 29, 1986 and he had lawfully entered the United States in May 1988. The

applicant was advised that his passport cast doubt on the veracity of his claim to have resided in the United States during the requisite period. The applicant was further advised that: 1) the Service contacted the mosque and was informed that [REDACTED] has not been at the mosque for over ten years and there was no way to verify the information in the affidavit; 2) the letter from Bryant Hotel had an indecipherable signature and no telephone number; 3) the letter from Hotel Mansfield could not be verified as there was no telephone listing for the hotel; 4) the affidavits submitted appeared to be neither credible nor amenable to verification as no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified in their respective affidavits; and 5) the applicant claimed to have only departed the United States in 1988; however, at the time of his interview, the applicant indicated that he had been married in 1984 in Senegal.

The applicant, in response, reasserted the veracity of his claim to have been residing in the United States since 1981. The applicant asserted, in pertinent part, “[n] fact, you found difficulties contacting my affiants because it has been years since they signed them. As far as my passport in concern, it was issued in Dakar 10/26/1986; but it was not received in Dakar on that date.” The applicant submitted:

- A notarized affidavit from [REDACTED] of New York, New York, who indicated that the applicant resided with him at [REDACTED], from January 1983 to December 1986. The affiant asserted that the rent receipts and household bills were in his name.
- An affidavit from [REDACTED] of Staten Island, New York, who attested to the applicant’s residence in New York City since December 1981. The affiant asserted that he had been contracted by the applicant’s landlord to paint in the building where the applicant resided in early 1982.
- A letter from [REDACTED] of Montreal, Quebec, who attested to the applicant’s visit at his home in Montreal from February 10, 1988 to March 10, 1988.
- A letter dated December 28, 1991, from [REDACTED] personnel manager of S&N Sales, Inc., Little Neck, New York, who indicated that the applicant was employed by its corporation as a driver from January 1982 to December 1982.
- A letter dated February 20, 1990, from [REDACTED] vice president of Islamic Council of America, Inc., in New York, New York, who indicated that the applicant has been a registered member since 1981.
- An unsigned affidavit from an affiant, which indicated that the applicant resided with the affiant [REDACTED] from December 1981 to February 1982.

On appeal, the applicant asserts, “[i]t has been a long time since the affiants signed them; it therefore is the main reason you have difficulties in getting in touch with my witnesses.” The applicant requested that the decision to deny his application be reconsidered.

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, *supra*. In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant’s knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits would not necessarily be fatal to the applicant’s claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for

the testimony provided. The statements issued by the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988, as he has presented contradictory and inconsistent documents, which undermines his credibility. Specifically:

1. The applicant has not addressed the director's finding regarding his marriage on January 30, 1984 in Senegal. As previously noted, the applicant claimed to have only departed in 1988 from the United States during the requisite period.
2. The applicant provided a copy of his Senegalese national identification issued on September 10, 1987, which bears his fingerprint. The fact that the identity document was issued with his photograph and fingerprint when he was supposed to be residing in the United States raises serious questions of credibility regarding his claim of residence.
3. The letter from [REDACTED] 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.
4. The employment letter from [REDACTED] failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the letter also failed to 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.
5. The applicant claimed on his Form I-687 application that he has been self-employed since May 1985. However, the applicant provided no evidence such as letters from individuals with whom he had done business as required under 8 C.F.R. § 245a.2(d)(3)(i).
6. The affiants failed to provide any details regarding the nature of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence during the requisite period seriously detracts from the credibility of his claim.
7. [REDACTED] letter raises questions to its authenticity as the applicant did not claim to have been employed by S&N Sales, Inc. on his Form I-687 applications during the requisite period.
8. The applicant provided two letters each from representatives of Aberdeen Hotel, Inc., Hotel Bryant and Hotel Mansfield Hall that contradict each other. No explanation has been provided why the representatives had amended their letters.
9. The applicant presented two Form I-687 applications dated April 7, 1990 and June 10, 1991, which contradict each other. In the first application, at items 22-28, the applicant indicated that a B-2 visa was issued to him in Dakar, Senegal on April 15, 1988. At item 33, the applicant listed his New York residences at [REDACTED] January 10, 1981 to November 1983; [REDACTED] from December 1983 to April 1986; [REDACTED] Street from May 1985 to April 1988 and from May 1988 at Unionport Road. At item 35, the applicant listed his departure during the requisite period from April 1988 to May 1988.

In his second application, at items 22-28, the applicant indicated that he entered without inspection. At item 33, the applicant listed his New York residences at [REDACTED] from January 10, 1981 to April 1984; at [REDACTED] from May 1984 to September 1986; and at [REDACTED] from October 1986 to February 1989. At item 35, the applicant listed his departure during the requisite period from February 1988 to March 1988.

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).

Given the numerous 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.