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U.S. Citizenship
and Immigration
Services

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FILE:

Office: NEW YORK

Date: NOV 28 2008

[REDACTED]
consolidated herein]
MSC 01 313 60680

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.


John F. Grissom, Acting 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 New York City. 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, the applicant asserts that the director did not apply the proper standard of review and that the evidence of record established his continuous residence in the United States during the requisite period for LIFE legalization.

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.”

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 Benin who claims to have lived in the United States since January 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on August 9, 2001. At that time the record included the following evidence of the applicant’s residence in the United States during the 1980s, which had been submitted in June 1990 with a Form I-687 (application for status as a temporary resident) to the Legalization Office in New York:

- Notarized statements from the clerks of three New York City hotels – Aberdeen Hotel Inc., Hotel Bryant, and Hotel Mansfield Hall – all dated in February 1990, stating that the applicant resided at those hotels from January 1981 to September 1986, from October 1986 to August 1988, and from October 1988 to December 1989, respectively, rooming with a friend and sharing the rent.
- A notarized statement from the owner of Dino’s Deli, in Bronx, New York, dated May 21, 1990, stating that the applicant was employed from January 1981 to May 1985, initially as a trainee in the delivery service and later at the counter.
- A letter from the “public information officer at the [REDACTED] in New York City, dated May 25, 1990, stating that the applicant had been a member of the Muslim Community since January 1981, attending services regularly.

On June 16, 2007, the director issued a Notice of Intent to Deny (NOID), indicating that the evidence of record was insufficient to establish the applicant’s continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The director indicated that the “affidavits” submitted by the applicant did not appear credible or verifiable, and that the “affidavits” from the Hotel Bryant, Hotel Mansfield Hall, and [REDACTED] had

been determined to be fraudulent and, therefore, had no probative value. The applicant was granted 30 days to submit additional evidence.

In response to the NOID the applicant defended the credibility of his evidence and indicated that the Hotel Bryant had been renovated a few years ago and its name changed to Ameritania Hotel.

On June 26, 2006, the director issued a Notice of Decision denying the application, stating that the applicant's response to the NOID did not overcome the grounds for denial. The director cited the applicant's conflicting testimony at two different interviews with regard to his initial date of entry into the United States. At the interview on his asylum application, dated December 2, 1991, the applicant stated that he entered the United States for the first time with a nonimmigrant visa on July 14, 1990, whereas at his interview for LIFE legalization on May 18, 2004, the applicant stated that he entered the United States for the first time with a nonimmigrant visa in January 1981. The director also reiterated that the affidavits from the aforementioned hotels and the [REDACTED] had been determined to be fraudulent.

On appeal, the applicant asserts that the director did not apply the proper standard of review and maintains that the evidence in the record establishes his eligibility for LIFE legalization. No further documentation is submitted.

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 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 applicant has no contemporary documentation from the 1980s demonstrating that he was residing in the United States at that time. The applicant has not addressed the fraudulent evidence cited by the director, and has not reconciled, or even addressed, his conflicting testimony regarding his initial date of entry into the United States. Other documentation in the record, however, points to an initial entry in 1990, rather than 1981. For example, in an affidavit in support of his asylum application, dated November 7, 1991, the applicant stated that he worked in Abidjan, Ivory Coast, from 1977 to 1990, before coming to the United States. This information is consistent with that provided by the applicant on the Form G-325A (biographic information) he submitted with his Form I-485 application in August 2001, which identified his last address outside the United States as located in Bassam, Ivory Coast, from 1979 to 1990. In addition, the record includes photocopied pages from the applicant's old passport issued in Benin on August 14, 1984, valid until September 1990, showing numerous entries to and exits from the

Ivory Coast during those years, but no travel to or from the United States. Based on the evidence discussed above, it is clear that the applicant was not continuously resident in the United States during the 1980s, and most likely never came to the United States before 1990.

Thus, the record clearly shows that the applicant did not reside 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, 8 U.S.C. § 245A(a)(2)(A). 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.