

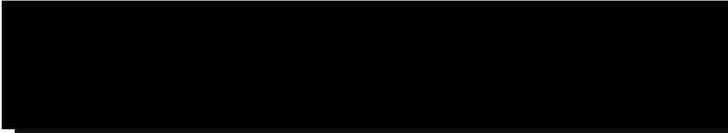
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FILE:

[Redacted]
MSC 02 026 62552

Office: GARDEN CITY

Date:

OCT 01 2008

IN RE: Applicant:



APPLICATION:

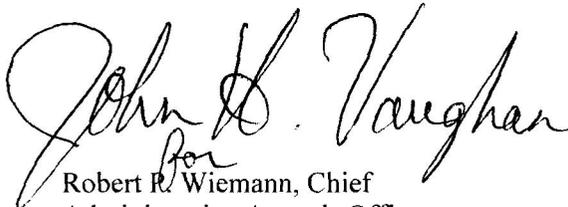
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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.



Robert R. 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 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 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.

On appeal the applicant asserts that the director did not properly evaluate the evidence he submitted. The applicant contends that he has provided sufficient evidence to establish that he has resided in the United States continuously in an unlawful status since 1981. The applicant has submitted additional documentation with the appeal.

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 January 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on October 26, 2001. At that time the record included the following evidence of the applicant’s residence in the United States during the years 1981-1988, which had been filed on June 25, 1991, along with a Form I-687 (application for temporary resident status) and a Form for Determination of Class Membership in *CSS v. Thornburg (Meese)*, a legalization class action lawsuit.

An affidavit from [REDACTED], public information representative of Masjid Malcolm Shabazz in New York City, dated May 3, 1990, stating that the applicant was a member of the Muslim community and had been in the United States since January 1981, attending Friday Jumah prayer services and other prayer services at the Masjid.

- A translated copy of a letter from the agency manager at Alitalia Airlines, in Dakar, Senegal, dated June 20, 1991, stating that the applicant traveled on the

airline's New York-Rome-Dakar route on December 12, 1987 under ticket number [REDACTED]

- An affidavit from [REDACTED], the clerk at Hotel Mansfield Hall in New York City, dated May 10, 1991, stating that the applicant resided in the hotel located at [REDACTED], New York, from January 1981 to September 1985, and that he roomed with a friend who shared the rent.
- An affidavit from the clerk at [REDACTED] Uptown Hotel, in New York, dated May 23, 1991, stating that the applicant resided in the hotel located at [REDACTED], New York, from September 1985 to February 1991, and that he roomed with a friend who shared the rent.
- An affidavit from [REDACTED], a resident of Bronx, New York, dated June 25, 1991, stating that he had personal knowledge that the applicant resided in the United States from February 1981 to the present (June 1991), and that he and the applicant conducted the same business on the street.

When she filed her Form I-485 in October 2001, the applicant submitted the following additional documentation:

An affidavit from [REDACTED], a resident of Brooklyn New York, dated October 9, 2001, stating that he had personal knowledge that the applicant resided in the United States from December 1981 to the present (October 2001), and that he met the applicant on New Year's Eve of 1981 in Times Square, New York.

- An affidavit from [REDACTED] a resident of Brooklyn New York, dated October 9, 2001, stating that he had personal knowledge that the applicant resided in the United States from January 1982 to the present (October 2001), and that he met the applicant at a colleague's birthday party on January 15, 1982 in Brooklyn.

At his LIFE legalization interview on May 6, 2004, the applicant submitted the following documentation:

Two receipts from Hotel Bryant in New York City, dated June 12, 1981 for rent from July 12 to August 12, 1981, and March 9, 1983 for rent from April 10 to May 1983.

Two receipts from Hotel Mansfield Hall in New York City, dated September 16, 1986 for rent from October 1986 to November 1986, and August 16, 1989 for rent from August 1989 to September 1989.

On May 5, 2007, the director issued a Notice of Intent to Deny (NOID). The director noted that the affidavits appeared neither credible nor amenable to verification, that only three of the affidavits submitted attested to the applicant's residence in the United States on January 1, 1982, and that the affiants did not include their identification, contact numbers, any proof that they were present in the United States during the statutory period, or proof of direct personal knowledge of the events attested. The director also noted that the receipts from Hotel Mansfield Hall and Bryant Hotel appeared to be fraudulent because the signatures on the receipts are illegible, and the dates altered. The director further noted that the affidavits from the Uptown Hotel and Hotel Mansfield Hall have the exact same format with different letterheads, dates, and signatures, leading to the conclusion that the two affidavits are merely altered copies, and the affidavits bear a striking resemblance to numerous other affidavits from these establishments presented by other applicants, suggesting that the documents are altered and therefore fraudulent. The applicant was granted 30 days to submit additional evidence.

The applicant failed to respond to the NOID, and on July 2, 2007, the director issued a Notice of Decision denying the application based on the grounds stated in the NOID.

On appeal, the applicant asserts that the director failed to properly evaluate the documentation of record. The applicant submitted additional documentation with the appeal, including the following:

- An affidavit from [REDACTED], a resident of Bronx, New York, dated August 28, 2006, stating that he has been acquainted with the applicant and has personal knowledge that the applicant resided at the following addresses in the United States: [REDACTED], New York, from December 1987 to March 1988; [REDACTED], New York, from November 1991 to March 2002; and [REDACTED], New York, from January 1996 to the present (August 2006).

A letter from [REDACTED], the vice president of Murid Islamic Community in America, located in New York City, dated May 26, 2007, stating that the applicant is a member in good standing of the organization, which was incorporated in 1991.

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.

In his NOID of May 5, 2007, the director indicated that the affidavits from Uptown Hotel and the Hotel Mansfield Hall appeared fraudulent because the two affidavits have the exact same format, that the only differences are the letterhead, the dates and the signatures which led the director to conclude that the affidavits are altered copies. Furthermore, the director noted that Citizenship and Immigration Services (CIS) had received applications from other aliens containing actual receipts from these hotels, showing the room numbers and dates of occupancy of the residents, and that the affidavits submitted by the applicant bear a striking resemblance to numerous other affidavits from these establishments presented by other applicants, suggesting that the documents are altered and therefore fraudulent. The director concluded that the affidavits in the record are fraudulent. The applicant did not address any of these issues raised by the director on appeal.

Furthermore, the rental receipts from Hotel Bryant dated June 12, 1981 and March 9, 1983, for rents from July to August 1981 and from April to May 1983, and from Hotel Mansfield Hall, dated September 16, 1986 and August 16, 1989, for rents from October to November 1986 and from August to September 1989, are inconsistent with information provided by the applicant on his Form I-687, Application for Status as a Temporary Resident, dated June 10, 1991, and the affidavits from Hotel Mansfield and Uptown Hotel. On Form I-687, the applicant listed his addresses in the 1980s as follows: [REDACTED] New York, from January 1, 1981 to September 1985, and [REDACTED], New York, from September 1985 to February 1991. The hotel receipts placed the applicant at [REDACTED], New York (Hotel Mansfield Hall), in 1986 and 1989, and at [REDACTED], New York (Hotel Bryant), in 1981 and 1983. The inconsistencies discussed above cast doubt to the credibility of the receipts as evidence of the applicant's residence in the United States in the 1980s.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

The affidavit from [REDACTED], the public information representative at Masjid Malcolm Shabazz, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The letter does state the address where the applicant resided during the period of membership, does not indicate how and when [REDACTED] met the applicant, and whether the information about his membership and attending prayer services during the period

stated was based on [REDACTED] personal knowledge, Mosque records, or hearsay. Since Mr. [REDACTED] affidavit does not comply with sub-parts (D), (F) and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that it has little probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The affidavits from [REDACTED] dated June 25, 1991, and from [REDACTED] and [REDACTED] dated October 9, 2001, stating that they have known the applicant since the early 1980s, all have minimalist or fill-in-the-blank formats with little personal input from the affiants. They could have easily been prepared by the applicant. Considering the length of time they claim to have known the applicant, the affiants provide remarkably little information about his life in the United States and their interaction with him over the years. Nor are the affidavits accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. 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, 1982.

The copy of the letter from Alitalia Airlines dated June 20, 1991, indicating that the applicant traveled with the airline on December 12, 1987, is not accompanied by a copy of an airline ticket or any other official document from the airline showing that the applicant did travel as indicated in the letter. Even if the AAO accepts the letter as evidence that the applicant traveled in December 1987, it does not demonstrate that he resided anywhere in the United States at that time, much less in the years before that.

The affidavit from [REDACTED] is internally inconsistent and inconsistent with the information on the applicant's Form I-687. Mr. [REDACTED] stated that he had personal knowledge that the applicant resided at [REDACTED], New York, from December 1987 to March 1988; at [REDACTED], New York, from November 1991 to March 2002; and at [REDACTED], New York, from January 1996 to the present (August 28, 2006). The latter two addresses and time frames are contradictory, placing the applicant at two different addresses at the same time. Moreover, the first address identified by [REDACTED] is inconsistent with the information on the applicant's Form I-687, dated June 10, 1991, which listed the applicant's residences as [REDACTED], New York, from January 1981 to September 1985; [REDACTED] from September 1985 to February 1991; and [REDACTED], Brooklyn, New York, from March 1991 to the present (June 1991). As indicated above, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho, id.*

As for the letter from [REDACTED], of the Murid Islamic Community in America, located in New York City, dated May 26, 2007, it has no probative value as evidence of the applicant's residence in the United States from before January 1, 1982 through May 4, 1988, because Mr. [REDACTED] indicated that the center was incorporated in 1991, and he said nothing about the applicant before then.

Based on the foregoing analysis of the evidence, 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, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The AAO also notes that the applicant was convicted of two offenses in the Criminal Court of The City of New York, County of New York, in December 1990 (Docket [REDACTED]), and May 1991 (Docket [REDACTED]), which must be considered in future proceedings before Citizenship and Immigration Services (CIS). An alien is ineligible for LIFE Legalization under Section 1104(c)(2)(D)(ii) of the LIFE Act, and 8 C.F.R. § 245a.18(a)(1), if he or she is convicted of one felony or three or more misdemeanors committed in the United States.

The appeal will be dismissed, and the application denied.

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