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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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[redacted]

FILE: [redacted] Office: NEW YORK Date: OCT 2 8 2008
MSC 02 173 60256

IN RE: Applicant: [redacted]

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:

[redacted]

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.

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

The director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant does not state a basis for his appeal. Instead, the applicant references additional letters which he submits with his appeal.

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.

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).

"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.

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.

In the Notice of Intent to Deny (NOID), dated September 5, 2006, the director stated that the applicant failed to submit sufficient evidence demonstrating that he entered the United States before January 1, 1982, and his continuous unlawful residence and his physical presence in the United States, during the requisite period. The director noted that the applicant submitted questionable affidavits from the Hotel Mansfield Hall, which was signed by [redacted], and from Hotel Bryant, which was signed by [redacted]. The director stated that the Service was unable to verify the veracity of the information contained in the affidavits and noted that the affidavits "bear a striking resemblance to the numerous other affidavits from these establishments presented by other applicants." The director also noted that an affidavit from [redacted] contradicted the applicant's testimony regarding the applicant's claimed June 1987 trip to Canada. Also, the director noted that a prior application to adjust status based on marriage had been denied because the applicant had submitted fraudulent documents. Therefore, the applicant was inadmissible as he had violated section 212(a)(6)(C)(i). In addition, the director noted that the applicant stated on his Form G-325A, which he submitted in connection with his application to adjust status based on marriage that he had resided in Dakar, Senegal, from December 1959, the time of his birth, until July 1994. For these reasons, the director concluded that the applicant could not establish his continuous residence during the requisite period. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated November 22, 2006, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant responded to the NOID, but, he did not provide any new information, nor documentation to overcome the grounds for denial stated in the NOID.

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. The applicant submitted letters and affidavits as evidence to support his Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

Employment Letters

The applicant submitted a letter of employment from of J & L Parking, Inc., 125 Municipal Parking Garage Facility, Inc., at 121 West 125th Street, New York, NY 10027, dated December 3, 1991, stating that the applicant had been employed as a dishwasher from October 1981 to May 1984. It is noted that the letter failed to provide the applicant's address at the time of employment.

In addition, the letter failed to show periods of layoff, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i). Furthermore, it is not clear why J & L Parking , Inc. or 125 Municipal Parking Garage Facility, Inc., would need the services of a dishwasher.

Affidavits & Letters

The applicant submitted the following:

1. A notarized letter from , dated December 15, 2006. Mr. states that he met the applicant in Brooklyn in July 1983, and that the applicant is still an active member of the Murid Islamic Community in America, and helps with the day to day operations of the organization.

2. An affidavit from , notarized on December 16, 1991. Mr. states that he has known the applicant since December 1981. The affiant, however, does not indicate how he dates his acquaintance with the applicant, whether he maintained contact with the applicant, and whether the applicant has been a continuous resident since 1981.

3. An affidavit from , notarized on December 12, 1991. Mr. states that he has known the applicant since December 1981. He lists addresses for the applicant from August 1981, and states that he and the applicant were hired the same day and worked together for several months during the period from 1981 to 1982. The affiant, however, does not indicate whether and how he maintained contact with the applicant throughout the requisite period.

4. A letter from e, President of the Murid Islamic Community in America, dated March 8, 2004, stating that the applicant has been involved in the organization since the early

1980's. Mr. also states that as early as 1987 the applicant was one of the organization's first active members.

5. A letter from , of The Islamic Center of Queens New York, dated December 11, 1991, stating that the applicant has been a member of the Muslim community since August 1981. Mr. also states that the applicant attends Friday prayers and other services, however, he does not indicate how often the applicant attended these services, and whether the applicant has been a continuous resident since August 1981.

6. A letter from , notarized on September 2, 1992. Mr. states that the applicant came from New York to visit him from June 5, 1987 to July 5, 1987. The affiant also states that he picked up the applicant in Detroit and drove the applicant to his home in Quebec, and at the end of his stay he drove him back across the border to Detroit.

7. A letter, dated December 10, 1991, from , Supervisor of Hotel Bryant, located at , New York, N.Y. 10019, stating that the applicant resided at the hotel from August 1981 to June 1984.

8. A letter, dated December 7, 1991, from , Assistant Manager of Mansfield Hall Hotel, located at , New York, N.Y. 10019, stating that the applicant resided at the hotel from June 1984 to December 1987.

The applicant has submitted two affidavits and seven letters in support of his application. However, the applicant has provided questionable documentation. As noted by the director in the NOID, the affidavits were unverifiable and questionable. Of the two affidavits, one of the businesses had no listing, and the other one was out of business. The director also noted previous applicants had presented affidavits of the same type from these establishments. In addition, the director deemed fraudulent the letters from Hotel Bryant and Mansfield Hall Hotel because of the similar letters received from these businesses. Therefore, these letters are not credible and are not probative. Also, the applicant claims that he has resided in the United States since 1981. However, the applicant stated on his Form G-325A submitted in connection with his adjustment of status application that he had resided in Senegal from birth to 1994.

The above discrepancies cast considerable doubt on whether the applicant resided in the United States from 1981 as he claimed. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

In addition, although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. None of the affiants indicated how they dated their acquaintance with the applicant, how they met the applicant or how frequently they saw the applicant. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

It is also noted that the record reflects that the applicant filed an I-485 Application for Adjustment of Status, concurrently with an I-130 Petition for Alien Relative, which was based on fraudulent birth and marriage certificates, and which was been denied for fraudulent filing. It is also noted that the applicant was previously placed in removal proceedings. On October 2, 1997, the Immigration Judge granted voluntary departure in lieu of removal on or before January 30, 1998, with an alternate order of removal to Senegal if the applicant fails to depart.

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 through 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