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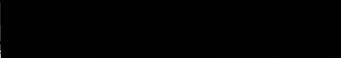
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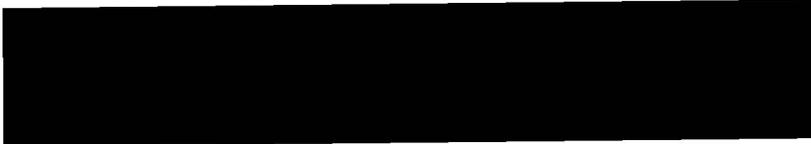
Applicant:



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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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, Garden City, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate 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 contends that the director did not sufficiently weigh the evidence submitted in support of his claim. He asserts that his 1987 absence from the United States in excess of 45 days was caused by his efforts to secure visas for the children of his deceased brother, whom he adopted. He contends that the director misinterpreted his Form I-485 application, in which he listed his adopted children who were born while he was in the United States.

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.

“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.

Although this term is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means “coming unexpectedly into being.” The applicant has not submitted any evidence to establish that an emergent reason delayed her return to the United States.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant 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

section 1104 of the LIFE Act. 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.* at 80. 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 or 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant’s own testimony. 8 C.F.R. § 245a.12(f).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet the burden of establishing, by a preponderance of the evidence, that the applicant’s claim of continuous unlawful residence in the United States during the requisite period is probably true. Upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

On May 7, 2002 the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to section 1104 of the Life Act (I-485 LIFE Legalization Application). In connection with his application, the applicant was interviewed on June 29, 2004. In his interview, the applicant stated that he first entered the United States in October 1981. However, the record does not contain any evidence of his entry prior to January 1, 1982.

In support of his claim of continuous residence, the record contains two declarations relating to the requisite period. In a declaration, dated March 4, 2004, Imam Salihou Djabi stated that he

has known the applicant since 1981. He stated that the applicant had been an active member of the Guinean Immigrants Association in the United States for the last 23 years. He provided an updated affidavit, dated July 5, 2007, affirming his previous declaration. He also provided his business cards. In a declaration, dated June 28, 1990, [REDACTED] stated that the applicant is a member of the Muslim Community and has been here since October 1981. Both affiants failed to provide details regarding their claimed friendship with the applicant or to provide any information that would indicate personal knowledge of the applicant's 1981 entry into the United States, his places of residence or the circumstances of his residence over the prior years of their claimed relationship. Although they claim to have known the applicant since 1981, they failed to note how or where they met him. Lacking relevant details, these affidavits have minimal probative value.

The record also includes a copy of an airline ticket indicating that the applicant traveled to the United States on November 22, 1987. The record also contains copies of the applicant's paystubs and 1988 W-2 indicating that he worked for Micro-Tool and Fabricating from December 1987 to February 1988. This evidence tends to establish that the applicant resided in the United States from November 1987 through February 1988.

It is also noted that the record contains the applicant's Form I-687, Application for Status as a Temporary Resident, signed by the applicant on January 29, 2001. In his Form I-687, the applicant indicated that he was absent from the United States from October 1, 1987, to November 22, 1987, for a business trip to Mali-Guinee. This absence of 52 days exceeds the permitted absence under the regulation at 8 C.F.R. § 245a.15(c)(1). On appeal, the applicant contends that his prolonged absence from the United States was caused by his efforts to secure visas for the children of his deceased brother. However, the applicant has not submitted any evidence to establish that an emergent reason delayed his return to the United States. To meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.12(f). Thus, if the applicant's claim is taken at face value, then his prolonged absence interrupted his continuous residence during the statutory period.

Finally, the applicant contends that the director misinterpreted his Form I-485 application, in which he listed his adopted children who were born while he was in the United States. Again, the applicant has not provided any evidence to establish the veracity of his claims.

Beyond the decision of the director, the record contains the applicant's Form G-325A, signed by the applicant on April 26, 2002. In his Form G-325A, the applicant indicated that he resided in Bamanko, Mali from March 1966 to October 1987. This is inconsistent with his claim of continuous residence in the United States for the duration of the statutory period. 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 unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record contains no independent objective evidence to explain the above inconsistency.

For the reasons noted above, the applicant has failed to establish his claim of continuous, unlawful residence in the United States for the requisite period. The AAO finds that, upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the applicant has not shown by a preponderance of the evidence that he resided in the United States for the requisite period. The AAO finds that the evidence in the record indicates that the applicant first entered the United States in 1987.

Pursuant to 8 C.F.R. § 245a.12(e), 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 lack of credible supporting documentation and the inconsistencies noted in the record, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

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