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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

MSC 02 143 66367

Office: NEW YORK Date:

SEP 09 2008

IN RE:

Applicant: [REDACTED]

APPLICATION:

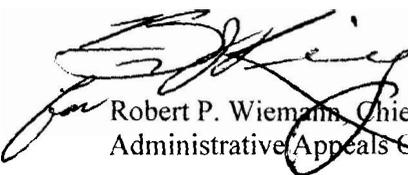
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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 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 District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district 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 the director's decision is erroneous as it did not take into account all the evidence that he had submitted.

It is noted that the director, in denying the application, did not set forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i). As such, the documentation submitted throughout the application process will be considered on appeal.

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.

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 November 21, 1988, from [REDACTED], public information for Masjid Malcolm Shabazz in New York, New York, who indicated the applicant has been a member since December 1982, and attended Friday Jumah prayer services as well as other prayer services at the Masjid.
- An affidavit notarized September 16, 1988, from [REDACTED] of New York, New York, who attested to the applicant's New York residence at [REDACTED] since April 1982.
- An affidavit notarized September 19, 1988, from [REDACTED] of Bronx, New York, who attested to the applicant's New York residence at [REDACTED] since March 1982.
- An affidavit from [REDACTED], owner of Food Center Store in New York, New York, who indicated that the applicant was employed at his store at [REDACTED] as a helper from 1982. It is noted that the year the employment ended is indecipherable.
- An affidavit notarized September 16, 1988, from [REDACTED], owner of property located at [REDACTED], New York, who indicated that the applicant has been a tenant since December 1982.

According to the interviewing officer's notes, the applicant indicated that he entered the United States in December 1981 without inspection and departed the United States only once in October 1986 to Senegal and returned with a B1/2 visa on November 1, 1986.

On April 14, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted appeared to be neither credible nor amenable to verification. The director further advised the applicant that no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified in their respective affidavits. The applicant, in response, asserted, in pertinent part:

First, I provided various documents to prove my residence in the United States from 1981 to 1988. However, the Service's decision did not take into account all the evidence I submitted in support of my application. The DAO did not give any weight whatsoever to the affidavits I presented from friends and acquaintances attesting that I was residing in the United States from 1981 to 1988.

The applicant submitted:

- A letter dated May 15, 2007, from [REDACTED] of Bronx, New York, who indicated that she has been acquainted with the applicant since 1981 and attested to the applicant's residence at [REDACTED] New York. The affiant asserted that the applicant "was working

in the neighborhood as a vendor selling scarves, glasses, hats, umbrellas, wallets, & belts. I did business with him regularly while from 1981 to 1986....”

- Copies of interim licenses/identification cards from the New York State Department of Motor Vehicles issued on May 22, 1987 and November 12, 1987 with expiration dates of July 6, 1987 and December 27, 1987, respectively.
- A New York State registration receipt issued on November 24, 1987 and a driver license issued on November 12, 1987.
- A Record of Conviction, MV-1, from the New York State Department of Motor Vehicles reflecting the applicant’s probation started on April 22, 1987 and expired on April 3, 1991.
- A Termination Notice indicating that the applicant’s car insurance was terminated on March 23, 1988, from Eagle Insurance Company of Lynbrook, New York.
- Two insurance certificates dated in November and December 1987.
- Car insurance documents from Eagle Insurance Company dated November 28, 1987.
- A motor vehicle tax receipt from the City of New York Department of Finance dated November 24, 1987.
- A letter dated January 22, 2004, from The Permanent Secretary of Murid Islamic Community in America in New York, New York, who indicated that the applicant has been a member of its organization since 1985. It is noted that the name of the individual signing this letter is indecipherable.

The director, in denying the application, determined that the documents submitted in response to the Notice of Intent to Deny were insufficient to overcome the grounds for denial.

On appeal, the applicant asserts, “I also gave the immigration officer documents and a health assessment form dated June 7, 1986. This important piece of evidence was discarded simply because it is a photocopy. I submitted a photocopy because I don’t have the original.” The applicant requests that his application be reconsidered. The applicant submits additional evidence and copies of documents previously submitted.

A review of the record, however, does not contain a health assessment form dated June 7, 1986. As such, Citizenship and Immigration Services (CIS) cannot consider a document that has not been submitted.

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 letters from [REDACTED] and Murid Islamic Community in America have little evidentiary weight or probative value as they do not conform to the basic requirements specified

in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the affiants do not explain the origin of the information to which they attest. Further, the applicant did not list any affiliation with a religious organization during the requisite period at item 34 on his Form I-687 application.

2. [REDACTED] and [REDACTED] attested to the applicant's residence at [REDACTED] in the United States since March 1982 and April 1982. However, neither affiant provides any details regarding the nature of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence. Furthermore, the affidavits lack probative value or evidentiary weight as the owner of the property located at [REDACTED] New York indicated that the applicant did not reside at this address until December 1982.
3. The employment affidavit 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 affiant 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. Furthermore, the applicant did not claim, on his Form I-687 application, employment during the requisite period with [REDACTED].
4. At items 22-30 on the Form I-687 application, the applicant indicated that he was issued a B-2 visa on December 17, 1982 in Senegal, and on his Form G-325A, Biographic Information, the applicant indicated that he was married in Senegal on November 4, 1982. The applicant, however, did not claim any absences at item 35 on his Form I-687, and at the time of his interview, the applicant indicated that he only departed the United States in October 1986.

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).

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the 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.

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).

An applicant for permanent resident status under the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in any of the following

legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (*CSS*), *League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (*LULAC*), or *Zambrano v. INS*, vacated sub nom. *Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) (*Zambrano*). See 8 C.F.R. § 245a.10.

The regulations provide an illustrative list of documents that an applicant may submit to establish that he or she filed a written claim for class membership before October 1, 2000. Those regulations also permit the submission of "[a]ny other relevant document(s)." See 8 C.F.R. § 245a.14.

The fact that an alien filed a timely legalization application does not establish eligibility to adjust to permanent residence under the LIFE Act. The legalization class-action lawsuits mentioned above relate to aliens who claim they did not file applications in the 1987-1988 application period because they were improperly dissuaded by the legacy Immigration and Naturalization Service from doing so. The applicant provides no explanation as to why he would have sought membership in the legalization class-action lawsuits as he had not been improperly dissuaded by the Service and did file a timely application on May 4, 1988. Furthermore, the record does not contain any documents, which establish that the applicant applied for class membership. Given the applicant's failure to even claim, much less document, that he filed a timely written claim for class membership, the applicant is ineligible for permanent residence under section 1104 of the LIFE Act.

The record reflects that the applicant timely filed a Form I-687, Application for Status as a Temporary Resident, under section 245a of the Immigration and Nationality Act (the Act). In attempt to establish his residence in the United States during the requisite period, the applicant submitted several envelopes postmarked January 31, 1982, December 28, 1983, August 5, 1984, November 30, 1987, and February 22, 1988. A Service investigation was conducted and it was revealed that the stamps affixed to the envelopes postmarked January 31, 1982, December 28, 1983, and August 5, 1984 were not issued by the government of Senegal until a later time.¹ Based on this information, the Form I-687 application was denied on June 28, 1991.²

The record also reflects that the applicant filed a Form I-485 application on March 19, 1999 and was assigned alien registration number [REDACTED]. On his Form G-325A, Biographic Information, signed February 4, 1999, the applicant indicated that he resided in his native country, Senegal, from March 1956 to November 1986.

These factors tend to establish that the applicant utilized documents in a fraudulent manner in an attempt to support his claim of residence in the United States during the requisite period. By engaging in such an action, the applicant has irreparably harmed his own credibility as well as the credibility of his claim of continuous residence in the United States for requisite period. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal.

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

¹ The information was obtained from the 1989 Scott Standard Postage Stamp Catalogue, Volume 4, pages 519, 520 and 521.

² The appeal from the denial of the application was dismissed by the AAO on February 1, 1993.