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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 03 015 62319

Office: NEW YORK

Date:

SEP 10 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. 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: On April 2, 2007, the District Director, New York, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant failed to submit credible documents that constitute a preponderance of the evidence as to his residence in the United States during the statutory period. The director found that the affidavits submitted by the applicant were fraudulent, unverifiable, and void of probative value. The director noted that a Record of Sworn Statement dated October 24, 1992, indicates that the applicant's first entry into the United States was on July 13, 1988, and that the applicant's passport and B-2 visitor's visa, both issued in Senegal in 1988, corroborate this.

The applicant asserts that the director applied a higher burden of proof than the law mandates. He asserts that he could not submit primary evidence of his residence and physical presence because he did not have a valid Social Security number, but that he has provided several affidavits of witness attesting to his presence during the relevant period. He asserts that it is becoming more difficult to contact individuals who knew him during that time because many of them have relocated.

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 and 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 period, 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 states 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 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 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). See 8 C.F.R. § 245a.15(b). 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.13(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet her burden of establishing by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true. Upon 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.

The record reflects that on January 7, 2007, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On August 16, 2004, the applicant appeared for an interview based on the application.

The applicant has provided the following evidence relating to the requisite period:

Letters and affidavits

- A letter dated August 2, 2004, from [REDACTED] founder and CEO of Kids Count First, Inc. [REDACTED] asserts that he has known the applicant since 1981 when he was 24 years old. [REDACTED] states that the applicant has been a volunteer in his company since 2002. He states that the applicant is a very good worker who gives 110% of his time and involvement in what he gets involved with. He states that the applicant is married with three children and that the applicant has also been a member of his other organization, Richmond County Radio Patrol, since 1985. [REDACTED] asserts that the applicant is very responsible and has no problem following directions. [REDACTED] asserts that he has been involved with the 122nd Precinct Community Council for the past 26 years and that the applicant has been involved for the past 10 years. He states that the applicant works for the Sephora Company as a loss prevention specialist and also in the clothing merchandise business. This letter can be given minimal evidentiary weight. [REDACTED] fails to indicate any personal knowledge of the applicant's claimed entry to the United States. Other than stating that he has

known the applicant since 1981, provides few, if any, details regarding any relationship with the applicant or of the circumstances of his residence during the requisite period. He does not indicate where, exactly when, or how he met the applicant or state how he remembers that it was 1981 when they first met;

- An “Affidavit of Witness” form sworn to on August 17, 1991. The form, signed by [REDACTED], an engineer, indicates that the affiant has personal knowledge that the applicant has resided at three different addresses in New York from November 1981 to present time. The form allows the affiant to fill in a statement that he or she “is able to determine the date of the beginning of his or her acquaintance with the applicant in the United States from the following fact(s): ____.” [REDACTED] simply added “Our first encounter occurred when I bought from him in front of building where I worked. Since then, we’re friendly 3 weeks.” This affidavit, prepared on a fill-in-the-blank form, is of little probative value and can be given little evidentiary weight, as it does not provide sufficient detail of the affiant’s personal knowledge of the applicant’s continuous residence and continuous physical presence. For example, the affiant does not describe how he knows where the applicant was residing based on his relationship with the applicant, how he remembers that his first encounter with the applicant was in November 1981, or how frequently he saw the applicant. This affidavit contains no details regarding any relationship with the applicant during the requisite period. [REDACTED] fails to indicate any personal knowledge of the applicant’s claimed entry to the United States or of the circumstances of his residence other than the city where he resided. Furthermore the addresses listed by [REDACTED] on this affidavit are inconsistent with the information provided by the applicant in his Form I-687, Application for Status as a Temporary Resident. For example, Mr. [REDACTED] states that from November 1981 to July 1985, the applicant lived at [REDACTED] in New York City, while the Form I-687 indicates that from January 1981 to June 1985, the applicant resided at [REDACTED]. 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 petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has not done so;

Letters from two mosques, the Islamic Council of America, Inc., and Masjid Malcolm Shabazz dated in February 20, 1990, and signed by [REDACTED] and June 1, 1990, and signed by [REDACTED], respectively. [REDACTED] attests that the applicant has been a permanent member of the council board since December 1981. He states that the applicant participates regularly in many Friday prayers and other social activities. He states that the applicant is a very dependable and honest person. [REDACTED] states that the applicant has been a member of the

Muslim Community and that he has been here since January 1981. He states that the applicant attends Friday, Jumah prayer and other prayer services. These letters can be given little evidentiary weight and have little probative value as they does not provide basic information that is expressly required by 8 C.F.R. § 245a.2(d)(3)(i). Specifically, [REDACTED] and [REDACTED] do not explain the origin of the information to which they attest, nor does they provide the address where the applicant resided during the period of his involvement with the mosques; and,

- A letter dated June 2, 1990, from [REDACTED], manager of the [REDACTED] Trading Company. [REDACTED] states that the applicant has been a regular customer at his store since 1981. He states that the applicant purchased different merchandise from his store. This letter can be given minimal evidentiary weight as it provides no detail of the affiant's personal knowledge of the applicant's continuous residence and continuous physical presence in the United States. Furthermore, the affiant does not describe how he remembers that his initial acquaintance with the applicant occurred in 1981, or how frequently he saw the applicant.

The record of proceedings contains other documents, including the birth certificates of the applicant's children, [REDACTED], born on April 4, 1997, [REDACTED] born on November 27, 1995, and [REDACTED] born on December 17, 1994, all born in Staten Island, New York. These documents all indicate physical presence after May 4, 1988, and do not address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have first entered the United States without inspection in November 1981, and to have resided for the duration of the requisite period in New York. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence he entered into the United States before January 1, 1982, and that he resided continuously in an unlawful status for the requisite period.

The absence of sufficiently detailed and probative documentation to corroborate the applicant's claim of entry and continuous residence for the entire requisite period, detracts from the credibility of his claim. 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 applicant's reliance on affidavits alone, which lack relevant details, and the lack of any probative evidence of his entry and residence in the United States from prior to January 1, 1982 through May 4, 1988, the applicant has failed to establish by a

preponderance of the evidence that he maintained continuous, unlawful residence in the United States 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.

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