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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 01 353 60015

Office: GARDEN CITY

Date: APR 01 2009

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).

IN 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.

John F. Grissom
Acting 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, New York and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant: 1) failed to submit the requested court dispositions; and 2) 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 he provided all the evidence he had, but it appears that the evidence was ignored. The applicant submits copies of documents that were previously submitted along with additional evidence in support of his appeal.

The first issue to be addressed is the applicant's criminal history.

An applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. Section 245A(b)(1)(C) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(b)(1)(C); 8 C.F.R. §§ 245a.11(d)(1) and 18(a)(1).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term actually served, if any; or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

The record reflects the applicant's criminal history in the state of New York as follows:

- On May 5, 2000, the applicant was arrested by the New York Police Department for violating PL 165.71, trademark counterfeiting in the 3rd degree. The applicant was convicted of disorderly conduct.
- On December 19, 2000, the applicant was arrested by the New York Police Department for violating PL 165.71, trademark counterfeiting in the 3rd degree and AC20-453.. The applicant was subsequently convicted of disorderly conduct and violent behavior.

In response to a request for all court dispositions and arrest reports, the applicant submitted certified court documents from the Criminal Court of the City of New York, which revealed the following:

1. On May 21, 1994, the applicant was arrested and subsequently charged with violating PL 165.71 and AC 20.453. On May 23, 1994, the applicant pled guilty to violating PL 240.20, disorderly conduct, a misdemeanor. [REDACTED]
2. On April 7, 1999, the applicant was arrested and subsequently charged with violating PL 240.20 and PL 165.71. On April 8, 1999, the applicant pled guilty to violating PL 240.20, disorderly conduct, a misdemeanor. The applicant was placed on conditional

discharge for one year and ordered to serve one day of community service. [REDACTED]

3. On October 24, 1999, the applicant was arrested and subsequently charged with violating AC 20.453. On October 24, 1999 the applicant pled guilty to violating PL 240.20, disorderly conduct, a misdemeanor. [REDACTED]
4. On April 28, 2000, the applicant was arrested and subsequently charged with violating PL 165.71 and AC 20.453. On April 29, 2000, the applicant pled guilty to violating PL 240.20, disorderly conduct, a misdemeanor. [REDACTED]

In response to a Notice of Intent to Deny issued on October 30, 2007, the applicant submitted a Community Service Contract signed November 7, 1997, for [REDACTED]. The applicant, however, did not provide the complete court disposition for this case.

The applicant asserted that he was arrested on April 7, 1999 and not in May 2000. As previously noted, the record reveals that the applicant was arrested twice in 2000; May 5th and December 9th. The applicant has the burden to establish, with affirmative evidence, that charges or arrests did not result in convictions. A mere statement made by the applicant is not affirmative evidence and fails to meet the applicant's burden. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The director, in denying the application, noted that the applicant did not submit the court dispositions for his arrests on May 5, 2000 and December 9, 2000.

The applicant, on appeal, neither addresses the director's findings nor provides any evidence to dispute the arrests.

Declarations by an applicant that he or she has not had a criminal record are subject to verification of facts by U.S. Citizenship and Immigration Services (USCIS). The applicant must agree to fully cooperate in the verification process. Failure to assist USCIS in verifying information necessary for the adjudication of the application may result in a denial of the application. 8 C.F.R. § 245a.2(k)(5).

The applicant is ineligible for the benefit being sought due to his four misdemeanor convictions. 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a)(1). In addition, the applicant failed to establish he is admissible due to his failure to provide the court dispositions for the arrests in 2000 necessary for the adjudication of the application. Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

The second issue to be addressed 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.

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. Section 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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).

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- Several envelopes with indecipherable postmarks.
- A letter dated February 13, 1990, from a clerk for [REDACTED] attesting to the applicant’s residence from February 1981 to the present.
- An affidavit from [REDACTED] who attested to the applicant’s residence at [REDACTED] since February 1981.
- A letter from [REDACTED], public information for Masjid Malcolm Shabazz in New York, New York, who indicated that the applicant has been a member since August

1981, and attended Friday Jumah prayer services as well as other prayer services at the Masjid.

- A letter dated August 28, 1990, from general manager of [REDACTED], [REDACTED] in New York City, who indicated that he has known the applicant since 1981 and attested to the applicant's moral character.

On October 30, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that he had failed to submit any evidence of his August 1981 entry into the United States. The applicant was advised that the affidavits submitted appeared to be neither credible nor amenable to verification and that no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified to in their respective affidavits. The director also advised the applicant, in pertinent part:

You provided a copy of your passport at your interview which indicated that you received a non-immigrant visa at the American Embassy in Dakar on November 19, 1986. You entered the United States on June 25, 1988 as a B-2 visitor. You indicated that you never left the United in 1986 which is deemed to be false as you obtained a visa from the Embassy on November 19, 1986.

The applicant, in response, asserted that he never obtained a visa in November 1986 and submitted copies of documents that were previously provided along with documents attesting to the applicant's residence in the United States subsequent to the period in question.

A review of the applicant's passport does not support the director's finding. The passport was issued on November 19, 1986 in Dakar, Senegal and the non-immigrant visa was issued on June 1, 1988 at the American Embassy in Dakar. Nevertheless, the applicant did not claim on his Form I-687 application an absence from the United States in 1986.

On appeal, the applicant once again submits copies of documents that were previously provided. The applicant also submits an affidavit from [REDACTED] of Brooklyn, New York who indicated that he met the applicant at [REDACTED] in January 1986 and became friends with him.

The U.S. Citizenship and Immigration Services (USCIS) 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, USCIS 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 should be analyzed to be determine 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 sufficient 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 inconsistent documents, which undermines his credibility.

The applicant claimed on his Form I-687 application that he was self-employed during the requisite period. However, the applicant provided no evidence such as letters from individuals with whom he had done business as required under 8 C.F.R. § 245a.2(d)(3)(i).

The signature on the letter from [REDACTED] is indecipherable, thereby giving rise to questions whether the signature is that of a person who was authorized and affiliated with the entity.

None of the affiants provide any details regarding the nature of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence. 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.

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).

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).

The record reflects that on February 3, 1994, a Form I-130, Petition for Alien Relative, was filed on behalf of the applicant by his spouse. Along with the Form I-130, Forms I-485 and G-325A, Biographic Information, were filed by the applicant.¹ On the Form G-325A, the applicant indicated that he resided in his native country, Senegal, from 1953 to January 1988.

¹ The Form I-130 and the Form I-485 were denied on November 1, 1995.

Along with his LIFE application, the applicant also provided a Form G-325A, on which he indicated on the form to have resided in his native country, Senegal from July 1970 to June 1988.

The evidence submitted by the applicant attesting to his residence in the United States since 1981 is inconsistent with the applicant's statements on the Form G-325A that he resided in Senegal until 1988.

The inconsistencies in the evidence raise serious questions regarding the authenticity of the supporting documents submitted with the LIFE application and tend to establish that the applicant utilized the affidavits and letters in a fraudulent manner in an attempt to support his claim of *continuous* residence in the United States during the requisite period. The Form G-325A undermines the credibility of the applicant's claim to have *continuously* resided in the United States during the period in question and, therefore, it is concluded that he has failed to establish continuous residence in an unlawful status from prior to January 1, 1982, through May 4, 1988, as required.

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.