

Division of Governmental and Public Affairs
U.S. Citizenship and Immigration Services

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Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 01 313 60064

Office: NEW YORK CITY

Date: APR 21 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).

ON BEHALF OF APPLICANT:

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 in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel asserts that the applicant submitted sufficient documentation to establish that he entered the United States before January 1, 1982, and resided continuously in the country in an unlawful status through the requisite period for LIFE legalization.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“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.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(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 its amenability to verification. See 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 applicant, a native of Gambia who claims to have lived in the United States since December 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on August 9, 2001.

In a Notice of Intent to Deny (NOID) dated August 17, 2007, the director indicated that the applicant had not submitted sufficient credible evidence to establish that he entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

The applicant responded, and on September 15, 2007, the director issued a Notice of Decision denying the application on the ground that the information and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial.

On appeal, counsel asserts that the applicant submitted sufficient evidence to establish his eligibility for LIFE legalization. Counsel submits no additional documentation with the appeal.

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The documentation submitted by the applicant in support of his claim that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through May 4, 1988, consists of the following:

- A notarized statement from the manager of Hotel Bryant in New York City, dated September 30, 1989, stating that the applicant had resided at the hotel from December 1981 to May 1987.
- A statement by [REDACTED], a public information official of Masjid Malcolm Shabazz in New York City, dated September 29, 1989, stating that the applicant was a member of the Muslim community and "has been here since December of 1981," attended Friday, Jumah prayer service and other prayer services at the Masjid.
- Affidavits – dated in 1989, 2001, and 2007 – from individuals who claim to have known the applicant resided in the United States during the 1980s.
A notarized letter from manager of [REDACTED] in New York City, dated September 29, 1989, stating that the applicant "has been a regular customer to my store since 1981."
- A copy of a New York State Drivers License issued to the applicant on February 29, 1988.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The record reflects that while the applicant claims that he entered the United States before January 1, 1982, and resided continuously in the country thereafter, except for one brief trip to Gambia lasting one month, from February 3, 1987 to March 13, 1987, other documents in the file show otherwise. For example, a copy of a Form I-94 (Arrival and Departure Card) in the file indicates that the applicant was admitted into the United States through New York airport on May 13, 1987, as a B-1 visitor. This entry date does not correspond with the period the applicant claimed on his Form I-687 (application for status as a temporary resident) that he traveled to Gambia.

On the Form I-697 in the file, the applicant listed his residential addresses during the 1980s as follows:

██████████
New York, New York, from December 1981 to May 1987; and ██████████ Bronx, New York, from May 1987 to the present (November 1989).

The address listed above is contrary to the address on the New York Driver's License issued to the applicant on February 29, 1988, which listed the applicant's address as ██████████ ██████████, New York, New York. The inconsistencies discussed above regarding the applicant's initial date of entry, his continuous residence, and his absences from the United States, cast grave doubt on the veracity of his claim that he entered the United States before January 1, 1982. 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 without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

As noted above, the applicant has provided contradictory testimony and information in support of his application. 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 – consisting of letters and affidavits from individuals who claim to have known the applicant during the 1980s, letters from Hotel Bryant and Masjid Malcolm Shabazz – is suspect and not credible. Thus, it must be concluded that the applicant has failed to establish that he entered the United States before January 1, 1982 and continuously resided in the United States in an unlawful status during the requisite period.

For example, the letter from Hotel Bryant, dated September 30, 1989, was signed by an individual carrying the title of “manager” who attests to the applicant's residence at the hotel from December 1981 to May 1987. The signatory of the letter does not identify the source of his information, such as specific business records, about the applicant's residence at the hotel. Nor is the letter supplemented by copies of rental receipts, utility bills, or other documentation to show that the applicant actually resided at the address during the years indicated. In view of these substantive deficiencies, the letter has little probative value. It is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The letter from ██████████ of Masjid Malcolm Shabazz in New York City, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the

applicant. The letter from [REDACTED] dated March 10, 1989, vaguely stated that the applicant was a member of the Muslim community and “has been here” since December of 1981, but did not state exactly when his membership began, did not state where the applicant lived at any point in time between 1981 and 1988, did not indicate how and when [REDACTED] met the applicant, and did not state whether his information about the applicant was based on personal knowledge, the mosque’s records, or hearsay. Since the letter did not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that it has little probative value. The letter is not persuasive evidence of the applicant’s continuous residence in the United States from before January 1, 1982 through May 4, 1988.

As for the notarized letters and affidavits in the record – dated in 1989, 2001 and 2007 – from individuals who claim to have known the applicant since the 1980’s, they have minimalist or fill-in-the-blank formats. The authors provide remarkably few details about the applicant’s life in the United States, such as where he worked and the nature and extent of their interactions with him over the years. The notarized letters and affidavits are not accompanied by any documentary evidence – such as photographs, letters, and the like – of the authors’ personal relationships with the applicant in the United States during the 1980’s. In view of these substantive shortcomings, and the inconsistencies noted above, the notarized letters and affidavits have little probative value. They are not persuasive evidence of the applicant’s continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. In fact, there is no credible documentation of the applicant’s presence in the United States at any time prior to his entry on a B-1 visa on May 13, 1987.

Based on the foregoing analysis of the record, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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