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U.S. Citizenship and Immigration Services  
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U.S. Citizenship  
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FILE: [REDACTED]  
MSC 02 250 66084

Office: GARDEN CITY

Date: APR 23 2009

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).

IN 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, 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 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 has submitted sufficient evidence to establish his continuous residence in the United States 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).

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.

On his initial Form I-687 application filed on October 28 1991, the applicant listed his spouse's name as [REDACTED] who was born in 1955. The applicant indicated that he had three children who were born in Gabon and listed their years of birth as 1977, 1979 and 1980.

On his subsequent Form I-687 application filed in 1992, the applicant listed his spouse's name as [REDACTED] with a date of birth of April 14, 1963. The applicant indicated that he had three children who were born in Gabon and listed their dates of birth as May 30, 1977, February 17, 1979, and September 11, 1980. The remaining two children were born in the United States on December 5, 1991, and September 2, 1993.

On both Form I-687 applications, the applicant listed one absence from the United States during the requisite period; August 12, 1987 to August 25, 1987.

On his Form I-485 LIFE application filed on June 7, 2002, the applicant listed his spouse's name as [REDACTED] and her date of birth of April 14, 1963. The applicant indicated that he had only three children who were born in the United States on December 5, 1991, September 2, 1993 and December 26, 2000. On the Form G-325A, Biographic Information, which accompanied the LIFE application, the applicant indicated that he was married to [REDACTED] on February 23, 1981, in Mali and he had no former spouses

The record reflects that the applicant filed a Form I-589, Application for Asylum and for Withholding of Deportation, on February 15, 1993. On the Form I-589, the applicant indicated that he arrived in the United States on June 20, 1992. Part D of the form, asks the applicant if he has traveled to the United States before and the applicant indicated "no." The Form G-325A dated February 15, 1993, which accompanied the initial Form I-589, requested the applicant to list his residence and employment for the last five years (1988 through 1993). The applicant listed his residence as [REDACTED] New York, New York and indicated that he was not working. The applicant also indicated that he was not married.

On his amended Form I-589 filed on March 17, 1999,<sup>1</sup> Part B, the applicant indicated that three of his children were born in Mali and listed their dates of birth as February 28, 1981, November 11, 1983, and in April 1985. The remaining child was born in the United States on May 16, 1997. The applicant indicated that his wife, [REDACTED], with a date of birth of February 5, 1955, had not entered the United States prior to July 8, 1995. At Part C, the applicant indicated that he was residing in "Kayes City" in 1985.

The record contains a transcript of hearing that occurred during the applicant's removal proceedings on May 24, 2000. A review of the transcript indicated the applicant informed the

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<sup>1</sup> The applicant indicated on the Form I-589 that the application was an amendment.

immigration judge that he married his wife, [REDACTED], in 1972 and he had three children who were born in Mali on February 28, 1981, November 11, 1983, and in April 20, 1985 and one child born in the United States on May 16, 1996. The transcript also indicated the applicant informed the immigration judge that he resided in Beno (Mali) until 1985 and left to reside in Kayes where he remained until 1992.

On May 24, 2000, the immigration judge denied the applicant's asylum application and withholding of removal and ordered the applicant removed from the United States. The alien subsequently filed an appeal, which was affirmed, without opinion, by the Board of Immigration Appeals on January 8, 2003.

In an attempt to establish continuous unlawful residence in the United States since before January 1, 1982, through May 4, 1988, the applicant provided postmarked envelopes and affidavits from acquaintances and an employer.

On September 20, 2006, the director issued a Notice of Intent to Deny, which advised the applicant that there were inconsistencies between his applications, documents and testimony, which impacted the credibility of his claim to have resided in the United States during the requisite period. Specifically, the applicant was advised of the statements he made during his removal proceedings, and what he had indicated on his Form I-589 regarding his place of residence until 1992, his spouse's entry into the United States and his children's dates of birth. The director determined that based on this information, the applicant was not in the United States prior to January 1, 1982 through May 4, 1988. The applicant was also advised that on his Form I-485 application, Part 3, Items 9 and 10, he had indicated "no" to each question.<sup>2</sup>

The director, in issuing her Notice of Intent to Deny, also drew extensively from the questions and answers provided at the time of the applicant's LIFE interview. However, neither the interviewing officer's notes nor a signed statement executed by the applicant corroborating the interviewing officer's questions, which would further impact adversely on the applicant's credibility, were incorporated into the record. Consequently, the director's finding that the applicant's oral testimony was inconsistent with other information in the record is withdrawn

On appeal, the applicant asserts that he never received the Notice of Intent to Deny. The record reflects that the notice was sent to the applicant and to his counsel at their addresses of record. There is no evidence in the record indicating that the notice addressed to the applicant was returned by the post office as undeliverable. The record clearly establishes that the notice was properly served on the applicant by sending it to him and counsel at their last known address in compliance with 8 C.F.R. § 103.5a(a)(2)(ii) and (iii).

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<sup>2</sup> Item 9 asks if the applicant has ever been deported or removed from the United States. Item 10 asks if the applicant is under a final order of civil penalty for violating section 273C of the Immigration and Nationality Act (document fraud).

The statements issued by the applicant on appeal have been considered. However, the AAO does not view the affidavits and postmarked envelopes submitted with his LIFE and Form I-687 applications credible to support a finding that he entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988. The information contained within the Forms I-589 and the transcript of hearing tends to establish that the applicant utilized the affidavits and postmarked envelopes 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 the requisite period, and the credibility of all documentation submitted in support of such claim. Neither counsel nor the applicant has presented any credible evidence to overcome the director's findings.

Given the numerous 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.

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