

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

L2

[Redacted]

FILE:

[Redacted]

Office: NEW YORK CITY

Date: FEB 02 2009

consolidated herein]
MSC 02 058 60592

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.

for John F. Grissom
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 grounds 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 the applicant asserts that he has resided in the United States since January 1981, and requests that his application be reconsidered.

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 Senegal who claims to have lived in the United States since January 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on November 27, 2001.

In a Notice of Intent to Deny (NOID) dated July 20, 2007, the director indicated that the applicant had not submitted sufficient credible evidence to establish his continuous residence in the United States during the requisite period for legalization under the LIFE Act. The director stated that some of the documents submitted were fraudulent. The applicant was granted 30 days to submit additional evidence.

The applicant did not respond to the NOID and on August 30, 2007, the director issued a Notice of Decision denying the application based on the grounds stated in the NOID.

On appeal, the applicant reiterates his claim to have resided in the United States since January 1981 and requests that the director’s decision be reconsidered. The applicant submits no additional evidence on 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 to have arrived in the United States before January 1, 1982 and resided continuously in the country in an unlawful status during the requisite period for LIFE legalization consists of the following:

- A statement from the clerk at [REDACTED] in New York City, dated July 17, 1990, that the applicant resided at the hotel from January 1981 to March 1983.
- A statement from the clerk at [REDACTED] in New York City, dated July 17, 1990, that the applicant resided at the hotel from April 1983 to July 1985. A statement from the clerk at [REDACTED] in New York City, dated July 17, 1990, that the applicant resided at the hotel from August 1985 to August 1989. A statement by [REDACTED], a public information official of Masjid Malcolm Shabazz in New York City, dated July 19, 1990. An affidavit from [REDACTED] dated July 18, 1990, stating that he had known the applicant since 1981.
- An affidavit by [REDACTED] of Queens, New York, dated July 17, 1991, stating that she had known the applicant since 1982. A statement from [REDACTED] dated January 19, 2004, stating that the applicant had been a tenant in his building (address unidentified) since 1987.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote document in this decision.

The file contains documentation that calls into question the veracity of the applicant's claim to have entered the United States in January 1981 and resided continuously in the country in an unlawful status through May 4, 1988. At his LIFE legalization interview on February 3, 2004, the applicant testified that he entered the United States in January 1981. On a Form I-687 (application for status as a temporary resident) filed in 1991, the applicant stated that he made one trip outside the United States during the 1980s – a trip to Gabon from November 1989 to January 1990. In the file is a copy of the applicant's Senegalese passport with an issue date of August 29, 1989, in Libreville, Gabon. The passport contains a B-1/B-2 visa issued to the applicant at the United States Embassy in Libreville, Gabon, on November 22, 1989, with which the applicant entered the United States through New York on January 24, 1990. Also in the file is a Form EOIR-40 (application for suspension of deportation) filed by the applicant on

March 26, 1996, in which the applicant stated that he first entered the United States on January 24, 1990 as a visitor with authorization to remain in the United States until February 23, 1990. The applicant further indicated on the form that he was married in Senegal on February 5, 1982 (confirmed by a copy of the marriage certificate in the record) and that he had two children born in Senegal on September 1, 1987 and May 1, 1989. The applicant has not provided any explanation as to how he could have gotten married in Senegal and his wife could have conceived and had two children in Senegal during a period when he claims to have been continuously physically present in the United States.

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. *See 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.*

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period for LIFE legalization. For someone claiming to have lived in the United States since 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary or secondary evidence during the following seven years through May 4, 1988.

The letter from [REDACTED] 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 July 19, 1990, vaguely stated that the applicant was a member of the Muslim Community and had "been here" since January 1981, but did not specify when the applicant became a member, did not state where the applicant lived at any point in time between 1981 and 1988, did not indicate how and when he 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 does 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.

The letters from [REDACTED] and [REDACTED], all dated July 17, 1990, were signed by individuals carrying the title of clerk who attest to the applicant's residence at those three hotels from January 1981 to August 1989. Although the letters are from three different hotels spanning three separate time periods, they all have identical wording and formats. The signatories of the letters do not identify the source of their information, such as

specific business records, about the applicant's residence at the hotels. Nor are the letters supplemented by copies of rental receipts, utility bills, or other documentation to show that the applicant actually resided at the addresses during the years indicated. Moreover, the information in the letter from [REDACTED], who states that the applicant rented a room from August 1985 to August 1989, conflicts with the information in the letter from [REDACTED] landlord of an unidentified residence in 2004, who stated that the applicant had been a tenant in his building since 1987. In view of their myriad deficiencies and inconsistencies, the foregoing letters have little probative value. They are 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 affidavits from [REDACTED] and [REDACTED], they have minimalist or fill-in-the-blank formats with little input by the affiants. Considering how long they claim to have known the applicant – since 1981 and 1982, respectively – the affiants provided remarkably few details about the applicant's life in the United States, such as where he lived, and their interaction with the applicant over the years. The affidavits were not accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the 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 evidence of the applicant's presence in the United States at any time prior to his entry on a B-1 visa on January 24, 1990, as indicated by the copy of a Form I-94 and the record from United States Citizenship and Immigration Services (USCIS).

Based on the foregoing analysis of the evidence, 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.