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U.S. Department of Homeland Security  
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Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

L2

[Redacted]

FILE:

[Redacted]

Office: GARDEN CITY

Date: FEB 02 2009

consolidated herein]  
MSC 02 183 65625

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 H. Vaughan*  
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 Garden City, New York. 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 director did not properly evaluate the evidence in the record, made some incorrect findings of fact, and did not articulate why she found the affidavits not credible. In counsel's view, the evidence of record is sufficient to establish that the applicant entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status from before January 1, 1982 through May 4, 1988.

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 Mali who claims to have lived in the United States since April 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on April 1, 2002.

In a Notice of Intent to Deny (NOID), dated June 11, 2007, the director cited inconsistencies between the applicant’s testimony at his LIFE legalization interview on March 17, 2004, and the documentation of record regarding when he first entered the United States, his trips outside the United States, and his residence in the country during the statutory period for LIFE legalization. The director indicated that the inconsistencies cast doubt on the veracity of the applicant’s claim that he entered the United States in April 1981 and resided continuously in the country through May 4, 1988. The director noted that the only proof of the applicant’s entry into the United States was an entry he made on April 7, 1990 with a B-1 visa. The director further indicated that the affidavits did not appear to be credible or verifiable. The applicant was granted 30 days to submit additional evidence.

In response, counsel offered explanations for the evidentiary deficiencies and discrepancies noted in the NOID, and submitted additional documentation.

On September 24, 2007, the director issued a Notice of Decision denying the application on the ground that the rebuttal information and additional documentation were insufficient to overcome the grounds for denial.

On appeal counsel asserts that the director did not properly evaluate the evidence in the record, ignored some of the evidence, made some incorrect factual findings, and did not articulate why he found the affidavits not to be credible. In counsel's view, the applicant submitted sufficient credible evidence to establish that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status from before January 1, 1982 through May 4, 1988.

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 documentation that the applicant submitted in support of his claim to have entered 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 by \_\_\_\_\_ a public information official of Masjid Malcolm Shabazz in New York City, dated May 8, 1990.
- Photocopied pages of an old passport, issued to the applicant in Mali on April 8, 1983, showing that the applicant was issued a B-1 visa by the United States Embassy in Bamako, Mali, on January 12, 1988, valid until February 12, 1988, and copies of numerous entry and exit stamps from Mali, Guinea, Nigeria, Togo, Niger, and France during the 1980s;
- Photocopies of letter envelopes with illegible postmarks, one with a claimed postmark date of "1985," and one with a partially legible postmark of September 27, 1982.
- A copy of an application for medical assistance from St Luke's-Roosevelt Hospital in New York City, dated November 1, 1981;
- Letters and affidavits dated in 1990, 2002, and 2007 from individuals who claim to have rented a room to, resided with, provided employment to, or otherwise known the applicant during the 1980s.
- A letter from Chemical Bank Credit Services addressed to the applicant, dated January 17, 1983.

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

The AAO notes that although the applicant claimed at his LIFE legalization interview on March 17, 2004, that he entered the United States in April 1981, and resided continuously in the country in an unlawful status through May 4, 1988, other documentation in the record indicates otherwise. For example, a copy of his expired passport shows that the applicant was issued a passport on April 8, 1983 in Bamako, Mali. The passport contains numerous exit stamps from Mali and entry stamps into countries such as France, Guinea, Nigeria, Togo, and Niger during the 1980s. Also in the passport is a B-1 visa issued by the American Consulate in Bamako on January 12, 1988. United States Citizenship and Immigration Services (USCIS) records – a Form I-94 in the file – show that the applicant was admitted into the United States through New York City on April 7, 1990 as a B-1.

On the Form I-687 (application for status as a temporary resident) he filed in 1990, the applicant listed two absences from the United States – from June 1983 to July 1983, and from August 1987 to July 1987. The applicant did not provide any explanations for the numerous exit and entry stamps in his passport or how he could have traveled to those countries during the same period he claims to have been continuously physically present in the United States. In fact, the applicant claims not to have made any of the trips cited by the director, despite clear passport evidence to the contrary. On a Form G-325A (Biographic Information), dated May 26, 1982, which the applicant filed with an earlier Form I-485 on May 28, 1992, the applicant indicated in response to the question asking for the applicant's last address outside the United States of more than one year – Tanabakara, Mali, West Africa, from October 1980 to April 1990.

The contradictory information in the record regarding the applicant's initial entry date into the United States and his absences from the country during the 1980s casts doubt on the veracity 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. 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.*

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 May 8, 1990, vaguely stated that the applicant was

a member of the Muslim Community and had “been here” since January 1982, but did not state exactly when the applicant became a member, or where the applicant lived at any point in time between 1981 and 1988. Nor did [REDACTED] indicate how and when he met the applicant, and 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 photocopies of the letter envelopes addressed to the applicant, some have illegible postmarks which look like they may have been altered by hand. One of the photocopied letter envelopes with a postmark date of December 11, 1985 is clearly fraudulent. While the postmark date appears to read December 11, 1985, another stamp on the envelope reads December 12, 1995. The 120F “Crocodilus Niloticus: Bama” stamp on the original letter envelope with a partially legible postmark date of September 27, 1982, was issued on March 31, 1976. *See Scott 2009 Standard Postage Stamps Catalogue*, Vol. 5, p. 773. Even if the AAO accepts the letter envelope with the postmark date of November 27, 1982 as evidence that the applicant was residing in the United States at that time, it is not sufficient to establish the applicant’s continuous unlawful residence in the country through the statutory period of May 4, 1988, especially in view of the contrary evidence previously discussed.

The photocopied application for medical assistance from St Luke’s-Roosevelt Hospital in New York bears handwritten entries identifying the applicant as the patient with an admission date of November 1, 1981. The document bears no date stamp or other official marking to authenticate the date it was written. It is not accompanied by medical records or any other documents from the hospital confirming that the applicant was in fact admitted to the hospital on November 1, 1981. Nor does the letter identify any address for the applicant. For the reasons discussed above, the document has little probative value. It is not persuasive evidence of the applicant’s residence in the United States during 1981, much less his continuous residence in subsequent years up to 1988.

The letter from Chemical Bank Credit Services dated January 17, 1983, appears suspect. The font styles between the address of the applicant and the body of the letter do not match. There is no signature of a bank official to authenticate the letter. Thus, the letter has little probative value. It is not persuasive evidence of the applicant’s residence in the United States in 1983, much less his continuous residence in subsequent years through May 4, 1988.

The notarized letters and affidavits in the record – dated in the 1990, 2002 and 2007 – from individuals who claim to have rented a room to, resided with, provided employment to, or otherwise known the applicant during the 1980s – have minimalist or fill-in-the-blank formats with little personal input by the authors. Considering the length of time they claim to have known the applicant, the authors provide remarkably little information about his life in the United States, and their interaction with him over the years. Nor are the affidavits and letters

accompanied by any documentary evidence – such as photographs, letters, and the like – of the personal relationship between the authors and the applicant in the United States during the 1980s. In view of these substantive shortcomings, the affidavits and letters 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.

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.