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U.S. Citizenship
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FILE:

Office: GARDEN CITY

Date: FEB 18 2009

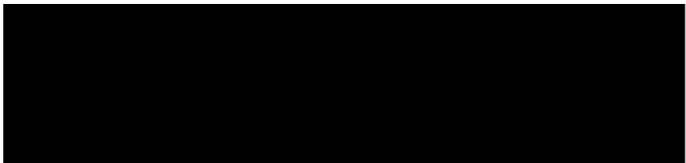
MSC 02 008 62841

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 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 the applicant asserts that the director did not properly evaluate the affidavits he submitted in support of his application. In the applicant's view the documentation of record is sufficient to establish that he meets the continuous residence requirement for legalization under the LIFE Act.

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 December 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on October 8, 2001.

In a Notice of Intent to Deny (NOID) dated July 19, 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 22, 2007, the director issued a Notice of Decision denying the application based on the grounds stated in the NOID.

On appeal the applicant asserts that the director did not properly evaluate the affidavits he submitted in support of his application. In the applicant’s view the documentation of record is sufficient to establish that he meets the continuous residence requirement for legalization under the LIFE Act. 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 that he 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 from the manager at [REDACTED] in New York City, dated July 5, 1990, that the applicant had lived at the hotel from July 1983 until June 1988.
A statement from the manager at [REDACTED] in New York City, dated July 11, 1990, that the applicant had resided at the hotel from December 1981 to July 1983.
A statement by [REDACTED] a public information official of Masjid Malcolm Shabazz in New York City, dated June 30, 1990, that the applicant had been a member of the Muslim community and had "been here" since December 1981.
Notarized letters and affidavits – dated in 1990 – from five individuals who claim to have known the applicant resided in the United States since 1981.
- A letter envelope addressed to the applicant in Brooklyn, New York, with illegible and partially legible postmark, which appears to have been altered by hand, that reads "24-3-1987".

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

Records from the United States Citizenship and Immigration Services (USCIS) shows that the applicant has another A-file with the agency – [REDACTED] This file contains documentation that calls into question the veracity of the applicant's claim to have entered the United States in December 1981 and resided continuously in the country in an unlawful status through May 4, 1988. A Sworn Statement executed by the applicant on May 2, 1987, and a Memo to File by immigration inspector at JFK airport in New York City on the same date, indicates that the applicant attempted to enter the United States on May 2, 1987, using a counterfeit B-1 visa issued in Lagos, Nigeria, on April 2, 1987. The applicant was refused entry into the United States, was detained by the then United States Immigration and Naturalization Service (USINS)

and was referred to the Executive Office of Immigration Review (EOIR) for Exclusion. The record further indicates that the applicant was ordered excluded on May 5, 1987, and was removed from the United States on May 6, 1987. The record also indicates that the applicant subsequently entered the United States on November 29, 1989, on a B-1/B-2 visa issued to the applicant at the United States Embassy in Niamey, Niger, on September 12, 1989. This information is corroborated by a Form I-130, Petition for Alien Relative, filed on the applicant's behalf on June 1, 1995. On that form, the applicant indicated that he entered the United States as a visitor on November 29, 1989. On a Form I-687 (application for status as a temporary resident) filed in 1990 under [REDACTED] the applicant indicated that he was absent from the United States only once during the 1980s – from July 1987 to August 1987 – for a trip to Niger. The inconsistencies in the record discussed above regarding the applicant's initial entry into the United States (1981, 1987 or 1989), and his continuous residence in the country casts doubt on the veracity of his claim that he entered the United States prior January 1, 1982 as required under the LIFE Act.

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.*

The record also contains information that calls into question the veracity of the applicant's claim that he resided continuously in the United States from before January 1, 1982 through May 4, 1988. Records from [REDACTED] indicates that the applicant filed a Form I-485 on June 1, 1995. The applicant completed two Forms G-325A (Biographic Information) with the application. On the first Form G-325A dated July 23, 1992, the applicant indicated his last address outside the United States of more than one year as – [REDACTED] Senegal, from July 1987 to November 1989. On the second Form G-325A (undated), the applicant indicated his last address outside the United States of more than one year as – [REDACTED] [REDACTED] from January 1961 (month and year of birth) to November 1989. On both forms, the applicant indicated that he was residing outside the United States until November 1989. On the Form I-687 (filed in 1990 under [REDACTED]), however, the applicant indicated the following as his addresses during the 1980s:

- [REDACTED], New York, New York, from December 1981 to July 1983;
- [REDACTED] New York, New York, from July 1987 to June 1988; and
- [REDACTED], Brooklyn, New York, from June 1988 to the present (1990).

The contradictory information discussed above regarding the applicant's address and residence during the 1980s casts considerable doubt on the veracity of the applicant's claim of continuous

residence in the United States during the 1980s. 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 from [REDACTED], a statement from [REDACTED] notarized letters and affidavits from acquaintances and a letter envelope with postmark date of 1987 – offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

Accordingly, 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.