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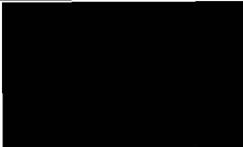
U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK CITY

Date: FEB 26 2009

consolidated herein]

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MSC 02 082 61181

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: SELF-REPRESENTED

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 the applicant asserts that he has submitted sufficient credible evidence 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 July 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on December 21, 2001.

In a Notice of Intent to Deny (NOID), dated September 22, 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 an unlawful status through May 4, 1988. The director noted that some of the affidavits submitted by the applicant are fraudulent which undermines the credibility of the affidavits as evidence of the applicant’s continuous residence in the United States during the period for legalization under the LIFE Act. The applicant was granted 30 days to submit additional evidence.

The applicant timely responded and submits additional affidavits, which the director noted were all outside the statutory period for LIFE legalization.

On December 19, 2007, the director issued a Notice of Decision denying the application on the ground that the information and additional documentation were insufficient to overcome the grounds for denial.

On appeal the applicant asserts that he has submitted sufficient credible evidence to establish that he meets the continuous residence requirement for legalization under the LIFE Act. The applicant 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 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 [REDACTED] a public information official of Masjid Malcolm Shabazz in New York City, dated January 11, 1991, stating that the applicant was a member of the Muslim community and "he has been here" since August 1981.

- A statement from the manager of [REDACTED] in New York City, dated January 14, 1991, stating that the applicant had resided at the hotel from July 1981 to May 1985.

A statement from the clerk of [REDACTED] in New York City, dated January 11, 1991, stating that the applicant had resided at the hotel from May 1985 to August 1989.

Affidavits dated in 1991 and 2001 from acquaintances who claim to have known the applicant resided in the United States since 1981.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility. Here, the submitted evidence is not probative and credible.

The AAO notes that although the applicant claims that he resided in the United States from before January 1, 1982, and thus is eligible for legalization under the LIFE Act, other documentation in the record indicates otherwise. For example, the file contains two Forms I-589 (application for asylum) the applicant filed in 1994 and 1995. On both forms the applicant indicated that he first arrived in the United States on December 13, 1989, on a C-1 non-immigrant visa. At his asylum interview on March 14, 1995, the applicant completed a Sworn Statement stating that he entered the United States on December 13, 1989. A copy of the applicant's expired passport in the file shows that the applicant was issued a passport on November 1, 1988 in Senegal. In the passport is a copy of a Canadian visa issued to the applicant in Dakar, Senegal, on November 24, 1989. Also in the passport is a copy of a visa issued to the applicant at the United States Embassy in Montreal, Canada, on December 11, 1989, which the applicant used to enter the United States on December 13, 1989. On the Form

for Determination of Class Membership in Catholic Social Services (CSS) v. Thornburg (MEESE) dated January 25, 1991, the applicant indicated that he entered the United States on July 20, 1981, and made only one trip outside the United States during the 1980s – a trip to Canada – from June 10, 1987 to June 30, 1987. On his Form I-687 (application for status as a temporary resident) dated June 25, 1991, the applicant indicated that he resided in the United States from July 1981 to the present (1991) except for one trip to Canada from June 10, 1987 to June 30, 1987. The inconsistencies in the record regarding the applicant's initial entry into the United States (1981 or 1989), casts considerable doubt on the veracity of his claim that he entered the United States in 1981 and resided continuously in the country from before January 1, 1982 through May 4, 1988.

The file also contains contradictory information regarding the applicant's claim of continuous unlawful residence in the United States through the requisite period for LIFE legalization. For example, on a Form G-325A (Biographic Information), dated November 27, 1993, which the applicant filed with the 1994 Form I-589, the applicant indicated in response to the question asking for the applicant's last address outside the United States of more than one year – [REDACTED] Dakar, Senegal, from November 1957 (month and year of birth) to December 1989. This information is contrary to the affidavits in the record stating that the applicant resided continuously in the United States from 1981 and contrary to the information provided by the applicant on the Form I-687 regarding his continuous residence in the United States from July 1981, except for one brief trip to Canada in 1987 lasting for only three weeks.

The contradictory information in the record regarding the applicant's initial entry date into the United States and his continuous residence in the country during the 1980s casts considerable 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.*

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 evidence during the following seven years through May 4, 1988. In fact the only evidence of the applicant's presence in the United States is his entry on December 13, 1989 with a C-1 visa.

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 mostly of a series of letters and affidavits – from individuals who claim to have known the applicant

in the United States during the 1980s, and the letters from [REDACTED] and [REDACTED] attesting to the applicant's continuous residence in the United States from 1981, is suspect and **non-substantive**. Thus, 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 period for legalization under the LIFE Act.

Given the paucity of evidence in 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.