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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[Redacted]

FILE:

[Redacted]

Office: GARDEN CITY

Date: JAN 05 2009

consolidated herein]
MSC 02 331 60880

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:

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.

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 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 he has submitted sufficient evidence to establish that he entered the United States before January 1, 1982, and resided continuously in the country in an unlawful status through the requisite period for LIFE legalization.

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 August 27, 2002.

In a Notice of Intent to Deny (NOID) dated September 7, 2007, the director cited the sworn statement completed by the applicant at his LIFE legalization interview on August 2, 2004, in which the applicant stated that he entered the United States for the first time in May 1987, and indicated that he had resided in the country since 1990. Based on this information the director concluded that the applicant had not maintained continuous residence and physical presence in the United States during the requisite periods for LIFE legalization. The applicant was granted 30 days to submit additional evidence.

The applicant did not respond to the NOID and on October 9, 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 he has submitted sufficient evidence to establish his eligibility for LIFE legalization, and that the interviewing officer coerced him into signing the

sworn statement attesting that he first entered the United States in 1987. 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 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 an unlawful status through May 4, 1988, consists of the following:

- A statement from the clerk of Aberdeen Hotel Inc. in New York City, dated February 22, 1990, stating that the applicant had resided at the hotel from January 1981 to June 1984.
- A statement from the clerk of Hotel Bryant in New York City, dated February 13, 1990, stating that the applicant had resided at the hotel from July 1984 to January 1987.
- A statement from the clerk of Hotel Mansfield Hall in New York City, dated February 13, 1990, stating that the applicant had resided at the hotel from February 1987 to February 1990.
- A statement by [REDACTED] a public information official of [REDACTED] in New York City, dated June 1, 1990, stating that the applicant "has been here since January 1981."
- Affidavits from [REDACTED] and [REDACTED] dated in 1990 and 2007, attesting that they knew the applicant resided in the United States from the early 1980s.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The statements and affidavits listed above are contradicted by other documentation in the file and records from United States Citizenship and Immigration Services (USCIS). A copy of the applicant's expired passport in the file shows that the applicant was issued a passport in Dakar, Senegal, on June 14, 1982. Said passport was later renewed on June 14, 1985 in Abidjan, Ivory Coast. The passport contains numerous entry and exit stamps from various countries in West Africa, such as Togo, Nigeria, Ivory Coast, Niger, Mali, Ghana, and Senegal, evidencing that the

applicant traveled to these countries during the years 1985-1988, when the applicant claims to have been physically present and residing in the United States. Also in the passport is a stamp by the United States Embassy in Abidjan, Ivory Coast, on January 16, 1986, showing that the applicant applied for a visa on that date. On January 6, 1987, the applicant was issued a B-1/B-2 visa at the U.S. Embassy in Abidjan, valid for three months, with which he entered the United States at New York City on February 25, 1987. USCIS records and another expired passport in the file show that the applicant was issued another three month B-1/B-2 visa at Niamey, Niger, on May 16, 1990, with which he entered the United States on May 30, 1990, through New York City.

While the information discussed above contradicts that provided by the applicant on a Form I-687 (application for status as a temporary resident) he prepared on June 16, 1990, stating that he had resided in the United States since 1981, departed once in January 1987, and returned in February 1987, it is consistent with (1) the applicant's interview testimony on August 2, 2004 that he first entered the United States in 1987 and has resided in the country since 1990, and (2) a Form G-325A (Biographic Information) the applicant filed on November 24, 1992, on which he stated that his last address outside the United States of more than one year was in Dakar, Senegal, up to May 1990

Based on the foregoing analysis of the record, it is abundantly clear that the applicant did not enter the United States before January 1, 1982 and reside 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.¹

The appeal will be dismissed, and the application denied.

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

¹ The AAO also notes that Federal Bureau of Investigation (FBI) records show the applicant was arrested by the New York Police Department on August 16, 2001 and charged with two offenses, including (1) a violation of New York Penal Code section 165.71 – trademark counterfeiting in the 3rd degree (a Class A misdemeanor), and (2) another offense identified as “[REDACTED]”. In any future proceedings before USCIS the applicant must submit documentary evidence of the final court disposition of these charges.