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20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

L2

FILE:

MSC 01 304 60223

Office: NEW YORK CITY

Date:

JAN 05 2009

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 H. Vaughan*  
for 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 the director did not properly evaluate the evidence in the record. The applicant further asserts that the evidence submitted is sufficient to establish that he has resided in the United States continuously in an unlawful status since 1981.

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 February 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on July 31, 2001.

In a Notice of Intent to Deny (NOID), dated July 24, 2007, the director cited inconsistencies between the applicant’s testimony at his interview on June 5, 2002, and the documentation of record regarding when he first entered the United States and his continuous residence in the country during the statutory period for LIFE legalization. The director cited information in the record that shows the applicant was issued a passport in Dakar, Senegal, on November 29, 1986, received an F-1 visa from the United States Embassy in Dakar on October 5, 1987, and was admitted to the United States with that visa on November 11, 1987. The director noted the absence from the United States of nearly a year between November 1986 and November 1987, with no evidence that emergent reasons accounted for such a long absence from the United States. The director also noted, based on the absence of credible evidence to the contrary, that November 11, 1987 appeared to be the applicant’s initial date of entry into the United States. The applicant was granted 30 days to submit additional evidence.

The applicant did not respond to the NOID, and on September 1, 2007, the director issued a Notice of Decision denying the application for the reasons stated in the NOID.

On appeal, the applicant asserts that the director did not properly consider the evidence of record, and reiterates his claim of eligibility for the benefit sought. No new evidence has been submitted.

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:

- Photocopied pages of an old passport, issued to the applicant in Senegal on November 29, 1986, showing that the applicant was issued an F-1 visa by the United States Embassy in Dakar, Senegal, on October 5, 1987, valid until January 5, 1988, to attend the ELS Language Center in River Forest, Illinois, with which he entered the United States at New York City on November 11, 1987.
- A letter from [REDACTED] at the ELS Language Center, dated July 12, 2002, stating that the applicant failed to report to the school for classes as expected on November 30, 1987.
- A copy of a New York State identity card issued in the applicant's name on January 21, 1988.
- Copies of various retail, rent, and money order receipts, some with handwritten notations of the applicant's name and/or address, dated from March 1982 to 1987.
- Five affidavits and letters from acquaintances, dated in 1988, 1989, and 2002.

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.

The applicant's claims that he entered the United States in February 1981, resided continuously in the country through May 4, 1988, and had just one trip outside the country to Senegal in October and November 1987, are contradicted by the record. According to the applicant's expired passport in the file, the applicant was issued his passport in Dakar, Senegal, on November 29, 1986,

and an F-1 visa at the United States Embassy in Dakar on October 5, 1987. United States Citizenship and Immigration Services (USCIS) records show that the applicant was admitted into the United States through New York City on November 11, 1987 as an F-1 student to attend the ELS Language Center in River Forest, Illinois. The documentation discussed above clearly shows that the applicant entered the United States on November 11, 1987, but undermines the applicant's claim that he entered the United States in February 1981 and resided continuously in the country in an unlawful status through May 4, 1988, because the applicant has not acknowledged his presence in Senegal in November 1986 and has not accounted for his long absence from the United States between November 1986 and November 1987.

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 indicates that the applicant was absent from the United States between November 1986 and November 1987, which far exceeds the 45-day maximum for a single absence, and the 180-day aggregate for all absences, prescribed in the regulation at 8 C.F.R. § 245a.15(c)(1). An absence of such duration interrupts an alien's continuous residence in the United States unless (s)he can show that a timely return to the United States could not be accomplished due to emergent reasons. While the term "emergent reasons" is not defined in the regulations, there is some pertinent case law. In *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), the Board of Immigration Appeals held that *emergent* means "coming unexpectedly into being." The applicant has not explained what sort of "emergent reasons" prevented his return to the United States within 45 days.

Based on the evidence in the record, the AAO concludes that the applicant has failed to establish that emergent reasons, within the meaning of 8 C.F.R. § 245a.15(c)(1), prevented his return to the United States from Senegal within 45 days after the issuance of his passport on November 29, 1986.

Thus, the applicant has failed to establish that he 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 section 1104 of the LIFE Act.

Beyond the decision of the director, the AAO also finds that the applicant's lack of candor about his presence in Senegal in November 1986 and apparent stay until November 1987 casts doubt on the credibility of other documentation submitted by the applicant as evidence of his residence in the United States during prior years, back to 1981.

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.