

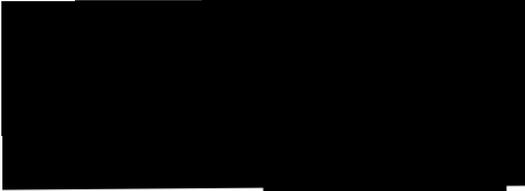
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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 02 074 61429

Office: NEW YORK

Date:

JAN 26 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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

A handwritten signature in black ink, appearing to read "John F. Grisson".

John F. Grisson, 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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant asserts that he has provided sufficient evidence to establish his continuous residence in the United States. The applicant submits additional evidence on appeal.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 amenability to verification. 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.

In the Notice of Intent to Deny (NOID), dated July 19, 2007, the director stated that the applicant failed to submit sufficient credible evidence demonstrating that he entered the United States before January 1, 1982, and his continuous unlawful residence in the United States, during the requisite period. The director noted that the seven (7) affidavits submitted were neither credible nor amenable to verification. The director also noted that the applicant stated that he had resided in the United States since 1981, and that since his arrival he made one trip, to Canada, from July 24, 1987 to August 24, 1987. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated August 24, 2007, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant responded to the NOID, but the information submitted was insufficient to overcome the reasons for denial stated in the NOID.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. The applicant submitted letters, affidavits, and other documents as evidence to support his Form I-485 application. Here, the submitted evidence is neither probative, nor credible.

The record of proceedings contradicts the applicant's assertion that he has resided continuously in the United States since 1981. In support of his application the applicant submitted affidavits from individuals who attest to his continuous residence since 1981. The applicant testified and indicated on his Form I-687 application, that since his entry in 1981, he departed the United State once, to Canada, on July 24, 1987 and returned to the United States on August 24, 1987. However, the applicant's Form G-325A indicates that he was married, in Dakar, Senegal, on May 16, 1984.

In addition, the applicant's Form I-485 application, which is dated November 28, 2001, indicates that he had four children. Two of the children were born on September 14, 1986, and on September 28, 1988, respectively. The other two children were born on January 30, 1979 and on November 5, 1977. However, on his Form I-687 application, which is dated July 6, 1991, the applicant listed only one child, born on July 8, 1991 which, it is noted, is after the date the applicant signed the form. The applicant states that his wife resided in the United States from 1982 to 1988, and she returned to Senegal to give birth in 1986 and in 1988. However, as noted by the director, the applicant does not submit any documentation to substantiate his claim that his wife resided in the United States from

1982 to 1988, and that she traveled to Senegal and returned to the United States after giving birth to the children. Also, the applicant does not explain why he listed the children who were born on September 14, 1986, September 28, 1988, January 30, 1979 and on November 5, 1977, respectively, on his Form I-485 application, but failed to list these children on his Form I-687 application.

The above discrepancies cast considerable doubt on the applicant's claim that he has resided continuously in an unlawful manner prior to January 1, 1982, and whether the affidavits the applicant submitted in support of his claim are genuine. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in his testimony and in the record. Therefore, the reliability of the remaining evidence 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.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

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