

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2



FILE:



Office: NEW YORK CITY
- consolidated herein]

Date: MAR 05 2009

MSC 02 229 61462

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 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 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on May 17, 2002.

In a Notice of Intent to Deny (NOID) dated August 17, 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 indicated that the affidavits submitted are substantively deficient. The applicant was granted 30 days to submit additional evidence.

The applicant responded with some explanation for the evidentiary deficiencies cited in the NOID, and submits an additional affidavit from an affiant attesting to the applicant residence in the United States from 1981.

On September 14, 2007, the director issued a Notice of Decision denying the application based on the grounds that the information and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial.

On appeal the applicant asserts that he has submitted sufficient evidence 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 series of affidavits dated in 1990 and 2007 from individuals who claim to have known the applicant resided in the United States from 1981.
- Rental receipts from [REDACTED] dated in 1981 and 1982 respectively.
- Merchandise receipts from [REDACTED] in New York City, with handwritten notation of the applicant's name and address and date stamp for 1981.

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) show 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 1981 and resided continuously in the country in an unlawful status through May 4, 1988. Records from [REDACTED] indicates that the applicant filed two Forms I-485 in 1994 and 2001, respectively. The applicant completed two Forms G-325A (Biographic Information) with the applications, dated November 9, 1992 and August 19, 1997. On the Form G-325A dated November 9, 1992, the applicant indicated his last address outside the United States of more than one year as – [REDACTED] from 1978 to June 1988. On the Form G-325A dated August 19, 1997, the applicant indicated his last address outside of the United States of more than one year as – [REDACTED] from birth to 1988. On both Forms G-325A, the applicant indicated that he resided outside the United States from birth until 1988.

The information on these forms is inconsistent with the information stated by the applicant on a Form I-687 (application for status as a temporary resident) dated June 22, 1990, under [REDACTED]

On the Form I-687, the applicant indicated the following as his addresses during the 1980s:

- [REDACTED], from October 1981 to April 1982;
- [REDACTED] from April 1982 to September 1984;
- [REDACTED] from September 1984 to June 1988; and
[REDACTED] from June 1988 to the present (1990).

The record reflects that a copy of the applicant's expired passport in the file shows that the applicant was issued a visa by the United States Embassy in Dakar Senegal, on May 27, 1988, which the applicant used to enter the United States on June 29, 1988. The applicant indicated on a Form I-130 (petition for alien relative) filed on his behalf on September 15, 1997, that he last arrived in the United States on June 29, 1988 as a visitor. Records from USCIS indicate that the applicant entered the United States with a B-1 visa on June 29, 1988. On the Form I-687 the applicant filed in 1990 under [REDACTED], he indicated that he traveled outside the United States twice – from November 1987 to December 1987, and from May 1988 to June 1988. The applicant did not submit any objective evidence to establish that he made the two trips outside the United States in 1987 and 1988. USCIS records that show that the applicant was admitted into the United States on June 29, 1988, and the absence of any objective evidence from the applicant to establish when he first entered the United States suggests that the applicant's first entry into the United States was on June 29, 1988 with a B-1 visa.

The inconsistencies in the record discussed above regarding the applicant's initial entry into the United States 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 contradictory information discussed above regarding when the applicant first entered the United States and his residences during the 1980s casts considerable doubt on the veracity of the his claim that he entered the United States before January 1, 1982, and other evidence of record. As previously stated, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.* 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 affidavits, as well as rental and merchandise receipts – offered by the applicant as evidence of his continuous residence in the United States is suspect and not substantive. Thus, it must be concluded that the applicant has failed to establish that he entered the

United States before January 1, 1982 and resided continuously in the country in an unlawful status for the requisite period required for legalization under the LIFE Act.

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.