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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

PUBLIC

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FILE: [REDACTED]
MSC 02 022 65014

Office: NEW YORK

Date: **MAY 01 2009**

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. 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.

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

The director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, resided in a continuous unlawful status through May 4, 1988, and, had been physically present during the requisite period. The director noted that the applicant stated under oath and in writing that he had resided in Senegal from January 1, 1982 to October 18, 1988 when he came to the United States.

On appeal, the applicant asserts that he has resided in the United States since 1981, and states that he may have misspoken due to a language barrier. The applicant does not submit 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 February 3, 2004, the director stated that the applicant failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States throughout the requisite period. The director noted that at his interview on February 3, 2004 the applicant stated under oath and in writing that he came to the United States on October 19, 1988, and that he had resided in Senegal from January 1, 1982 to October 18, 1988. The director determined that the applicant cannot establish his continuous unlawful residence in the United States throughout the requisite period. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated March 1, 2004, the director denied the instant application. The director noted that in response to the NOID the applicant submitted additional evidence. However, the evidence provided was insufficient to overcome the reason for denial as stated in the NOID.

On appeal, the applicant states he may have misspoken due to a language barrier at his interview, but he has resided in the United States since 1981. However, as noted above, at the applicant's interview on February 3, 2004, he signed a sworn statement, stating that he had resided in Senegal from January 1, 1982 to October 18, 1988, and that he entered the United States on October 19, 1988. Essentially, the applicant denies the content of the sworn statement as it pertains to his absence during the requisite period. The record is clear, however, that the statement was acknowledged, sworn to, and signed by the applicant before an immigration officer. The applicant cannot, therefore, avoid the record he has created.

Contrary to the applicant's claim, the record points to the applicant's residence in Senegal from birth until October 18, 1988. The record reflects that the applicant indicated on his asylum application, Form I-589, filed on October 19, 1992, and testified at his asylum interview, that he first entered the United States on October 19, 1988, and that he had resided in Senegal from birth until October 18, 1988. The applicant indicated on his asylum application that his passport had been issued in Senegal on February 5, 1988, and that he had resided in the Ivory Coast for 6 months before coming to the United States. During his asylum interview the applicant specifically states that he lived with his

father in Senegal until his father died in 1987. The applicant indicated on his Biographic Information Form G-325A, signed on October 5, 1992, which he submitted in connection with his Form I-589, that he had resided in Touba, Senegal, from February 1960 to October 1982. Yet, the applicant indicates on his Form I-687 application that he has resided in the United States since 1981, and he has provided affidavits and letters attesting to his residence in the United States since 1981. Clearly, the applicant's Form I-687, and his supporting documentation, contradict the contents of the record of evidence as it relates to the applicant's asylum application. The applicant has failed to submit any reliable independent, corroborative, contemporaneous evidence to rebut this evidence in the record.

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 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.

The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 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.