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[REDACTED]

FILE: [REDACTED] Office: BALTIMORE
& [REDACTED] - consolidated herein]
MSC 02 274 62941

Date: MAY 04 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:
[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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, Baltimore, Maryland. An appeal from that decision was rejected by the Administrative Appeals Office (AAO). The matter will be reopened and the appeal will be dismissed.

The applicant filed a Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on July 1, 2002. On July 30, 2004, the director denied the application on the basis that the applicant had failed to provide sufficient evidence to establish that he complied with the two-year foreign residence requirement. The applicant filed an appeal from the director's decision that was erroneously rejected by the AAO on April 19, 2007, as untimely filed. A review of the record reveals that the appeal was, in fact, timely filed. Therefore, the matter will be reopened *sua sponte* by the AAO.

The AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO's *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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

- (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.
- (ii) Nonimmigrants – In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, the alien must establish that the alien's period of authorized stays as a nonimmigrant expired before such date through the passage of time or the alien's unlawful status was known to the Government as of such date.
- (iii) Exchange Visitors – If the alien was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(J)), the alien must establish that the alien was not subject to the two-year foreign residence requirement of section 212(e) of such Act or has fulfilled that requirement or received a waiver thereof.

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.

The issue in this proceeding is whether the applicant has demonstrated that he satisfied the two-year foreign residency requirement. In an attempt to establish that he returned to Guinea-Bissau for two years to fulfill that requirement, the applicant has submitted the following documentation:

- Letters from the Republic of Guinea-Bissau, Ministry of Revenue and Finances, Office of the Inspector General, dated August 13, 2003, and September 11, 2003, stating that the applicant was hired by the Ministry in the Revenue Control Board department on February 1992, having remained in that capacity until July 1994, at which time he left the country for the United States in order to continue his studies.
- A Social Security Statement from the United States Social Security Administration, dated March 23, 2002, showing that the applicant had no earnings for the years 1992 through 1994.

On appeal, counsel asserts that the director's decision is against the weight of the evidence; the alien complied with the section 212(e) requirements; the director failed to take into consideration the peculiar social circumstances in third-world countries where social amenities are unavailable; and, the applicant's last entry into the United States was in September 1994. In support of the appeal, counsel submits an affidavit from the applicant stating that while in Guinea-Bissau he resided at his father's house, paid no rent, there were no utilities, and civil servants in the country have income taxes deducted from their wages – therefore, he is unable to provide evidence of having filed income tax.

The Form I-485, Application to Register Permanent Resident of Adjust Status, contained in the record, signed by both the applicant and counsel on May 30, 2002, was filed with USCIS on July 1, 2002. On that application, the applicant lists his date of last arrival in the United States as September 1991. On appeal, counsel submits a photocopy of a hand-written Form I-485 which she claims was used by her to prepare the Form I-485 submitted to United States Citizenship and Immigration Services (USCIS). The photocopy lists the applicant's date of last arrival as September 1994.

Counsel appears to be asserting that the Form I-485 submitted to USCIS contained an error regarding the applicant's last date of arrival in the United States but has submitted no objective evidence to support this assertion, such as evidence of the applicant's travel from Guinea-Bissau to the United States in 1994.

Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any 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. (Comm. 1988).

The AAO determines that given the paucity of the documentation provided by the applicant to support his claim, as well as the discrepancy noted in the record regarding his last date of arrival in the United States, the evidence submitted fails to establish by a preponderance of the evidence that the applicant satisfied the two-year foreign residency requirement. Thus, the applicant has failed to establish that he is eligible for adjustment of status under the LIFE Act.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.

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