

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

L2

FILE:

MSC 01 362 60008

Office: NEW YORK

Date: **MAY 04 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.

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

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 determined that the applicant failed to establish that he entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant submits a brief statement and an additional document.

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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v), states that attestations from churches, unions, or other organizations should: identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided during the membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

The applicant filed the current Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on September 27, 2001. The director denied the application on September 26, 2006. The applicant filed a timely appeal from that decision on October 18, 2006.

The applicant, a national and citizen of Senegal, claims to have initially entered the United States in without inspection in October 1981, and not to have departed the United States from that date through May 4, 1988. It is noted that the only documentation provided by the applicant to establish an entry into the United States is a photocopy of his passport indicating that he was admitted to the United States as a nonimmigrant visitor (B-1/B-2) on November 25, 1989, at New York, New York.

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).

The issue in this proceeding is whether the applicant has established that he continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

In an attempt to establish his continuous unlawful residence in the United States during the requisite time, the applicant has submitted the following documentation throughout the application process:

1. A photocopy of a letter, dated May 19, 1990, from [REDACTED] located at [REDACTED] stating that the applicant had resided at the hotel from October 1981 to March 1984, and a photocopy of a similar letter, dated May 25, 1990, from [REDACTED], located at [REDACTED] New

York, stating that the applicant had resided at the hotel from March 1984 to May 1988.

2. A photocopy of an un-notarized letter, dated May 17, 1990, from [REDACTED] of the Masjid Malcolm Shabazz in New York, stating that the applicant had been a member, attending various prayer services, since October 1981.
3. Similar fill-in-the-blank affidavits and letters, dated May 18 and 21, 1990, from [REDACTED] and [REDACTED] stating that they had met the applicant in 1981 and listing the applicant's addresses in the United States from 1981 through 1990.
4. A fill-in-the-blank affidavit from [REDACTED] dated September 25, 2001, stating that he met the applicant, a resident of New York, at a flea market festival in Manhattan on December 20, 1981.
5. A photocopy of a letter from [REDACTED] dated May 16, 1990, stating that the applicant had been a regular customer at the store since 1981
6. An affidavit from [REDACTED], dated December 15, 2005, stating that he can vouch for the applicant's entry into the United States before January 1, 1982, and his continuous physical presence in the United States since 1982.
7. A letter from [REDACTED], dated January 11, 2007, stating that he was the applicant's landlord and that the applicant lived at [REDACTED] Bronx, New York, from 1981 "until a few years ago."

The letter from [REDACTED] in No. 2, above, does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v) in that it does not show the address(es) where the applicant resided throughout the membership period or establish the origin of the information being attested to (i.e., whether the information being attested to is anecdotal or comes from church membership records).

The documentation provided in Nos. 3, 4, 5, and 6, above, lack details as to how the affiants first met the applicant, what their relationships with the applicant were, and how frequently and under what circumstances they saw the applicant during the requisite period. Furthermore, the affidavit from Mr. [REDACTED] (No. 6, above) is devoid of details that would lend credibility to his claimed 23-plus year relationship with the applicant and provides no basis for concluding that he actually had direct and personal knowledge of the events and circumstances of the applicant residence in the US throughout the requisite period. As such, the statements can only be afforded minimal weight as evidence of the applicant's residence and presence in the United States throughout the requisite period.

It is also noted that the information provided by [REDACTED] in No. 7, above, regarding the applicant's address(es) in the United States contradicts the earlier information provided in No. 1. These discrepancies in the applicant's submissions have not been explained. 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 regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Based on a review of the record, given the paucity of the documentation provided and the inconsistencies noted, the AAO determines that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, resided in this country in an unlawful status continuously since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, he is ineligible for permanent resident status under section 1104 of 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.

It is noted that the applicant was arrested in Chicago, Illinois, on or about December 22, 1997, and charged with Battery/Cause. In any future proceedings before United States Citizenship and Immigration Services (USCIS), the applicant must provide evidence of the final court disposition of this arrest and any other charges against him.

It is further noted that on March 5, 1999, an Immigration Judge in Chicago, Illinois, denied the applicant’s request for withholding of removal, and the applicant was granted until May 4, 1999, to depart the United States voluntarily.

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