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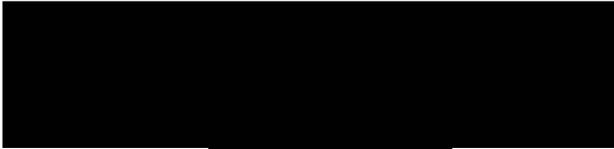
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090



U.S. Citizenship
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FILE:

MSC 02 243 62715

Office: GARDEN CITY

Date: MAY 06 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.

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 Garden City, New York. 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 counsel asserts that the director did not properly evaluate the evidence in the record. In counsel's view, the applicant submitted sufficient credible evidence to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status through May 4, 1988.

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 31, 2002.

In a Notice of Intent to Deny (NOID) dated July 18, 2007, the director indicated that the applicant had not submitted sufficient credible evidence to establish that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through May 4, 1988. The director also indicated that the applicant submitted contradictory information in support of his application. The applicant was granted 30 days to submit additional evidence.

In response to the NOID, the applicant submitted additional documents but did not address the inconsistencies cited in the NOID. On September 10, 2007, the director issued a Notice of Decision denying the application, indicating that the information and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial.

On appeal counsel asserts that the director did not properly evaluate the evidence in the record. In counsel's view, the applicant submitted sufficient credible evidence to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status through May 4, 1988. Counsel submits no additional documents with the 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 to have arrived in the United States before January 1, 1982, and resided continuously in the country in an unlawful status through the requisite period for LIFE legalization, consists of the following:

- Affidavits from two individuals – dated in 1990 – claiming to have known the applicant resided in the United States from December 1981. Copies of rental receipts from Uptown Hotel in New York City, dated in September and October 1983 and from [REDACTED] which appears to have been dated in 1980 for rentals in 1981 and 1982.
- Copies of merchandise receipts with handwritten notations of the applicant's name and address dated in December 1981, January 1982, and March 1982. A copy of a rental application for [REDACTED], New York, dated May 20, 1985.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility. The documentation submitted is not probative and credible.

Although the applicant claims that he entered the United States in 1981, he did not submit any primary evidence to establish the claimed entry. The AAO finds that the documents in the file contains contradictory information which calls into question the veracity of the applicant's claim that he entered the United States before January 1, 1982 and resided continuously in the country from then on. A copy of the applicant's expired passport shows that the applicant was issued the passport on May 24, 1989 in Dakar, Senegal. The applicant applied for a visa at the American Embassy in Libreville on September 5, 1989, and was issued a B-1/B-2 visa at the American Embassy in Libreville on September 6, 1989. A review of the pages of the passport shows the

following: an exit stamp from the airport in Dakar on June 6, 1989; an entry stamp at the airport in Libreville on June 7, 1989; an arrival stamp at the airport in Dakar on September 10, 1989; an exit stamp from the airport in Libreville on September 10, 1989; partially legible stamp from the airport in Dakar on November 18, 1989; and an entry stamp by U.S. Immigration in New York City on November 18, 1989. There is no evidence of exit from Libreville following the entry on June 7, 1989.

On the Form I-687 (application for status as a temporary resident) dated July 27, 1990, the applicant indicated absences from the United States during the 1980s – from May to June 1989, and from September to November 1989 – two trips to Senegal and Gabon. Although the record is clear as to the applicant's entry into the United States in November 1989, there is no credible evidence of the applicant's entry into the United States in June 1989 because while the stamps on the passport shows the applicant's travel from Dakar to Libreville in June 1989, there is no evidence that the applicant left Libreville and entered the United States in June 1989. It is incumbent upon the applicant to resolve any inconsistencies or contradictions 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. *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.* Absent any objective evidence as to when the applicant entered the United States, the only evidence of the applicant's presence in the United States was the entry on November 18, 1989, through New York City.

The copies of receipts from [REDACTED] and [REDACTED] do not appear to be genuine. The receipts from [REDACTED] indicate that the applicant resided at the hotel located at [REDACTED] in September and October of 1983, for which receipts were issued, and resided at [REDACTED] in November and December 1981 and January 1983. The applicant however, indicated on the Form I-687 that his residential addresses during the same periods were [REDACTED] New York, and [REDACTED] New York. In addition, the rental receipts are not accompanied by any rental agreements to verify that the applicant resided at the addresses during the periods indicated.

The merchandise receipts dated December 1981, January and March 1982, have handwritten notations of the applicant's name and address. The receipt dated December 1981, identified the applicant's address as [REDACTED], and the receipts dated January and March 1982, identified the applicant's address as [REDACTED] – which conflicts with the information provided by the applicant on his Form I-687, dated July 27, 1990. On that form, the applicant listed his address during that same period as [REDACTED]. Thus the merchandise receipts do not appear to be genuine and have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The photocopy rental application for [REDACTED], dated May 20, 1985, did not specify the period of rental. The applicant listed his prior residential addresses as: [REDACTED]

██████████ New York, from October 1983, and ██████████, New York, from November 1981 to October 1983. These addresses are contrary to what the applicant stated on the Form I-687 dated July 20, 1990. As previously noted, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho, id.*

The applicant has provided contradictory testimony and information in support of his application. 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 two fill-in-the-blank affidavits from individuals who claim to have known the applicant resided in the United States from December 1981– is suspect and not credible. Thus, it must be concluded that the applicant has failed to submit credible documentation to establish that he entered the United States before January 1, 1982 and resided continuously in the country during the period for legalization under the LIFE Act.

Based on the foregoing analysis of the evidence, the AAO concludes that 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.