

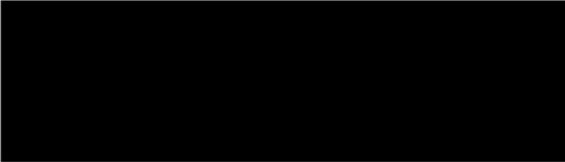
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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FILE:



Office: MILWAUKEE

Date: MAY 06 2009

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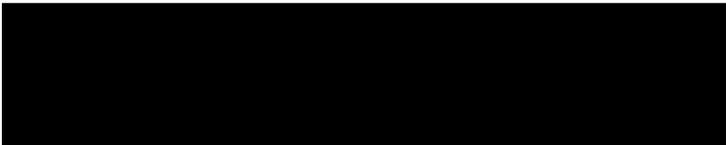
IN RE: Applicant:



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 Milwaukee, Wisconsin. 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 counsel asserts that the director did not properly evaluate the affidavits submitted by the applicant in support of his application. In counsel's view the documentation in the record is sufficient to establish that the applicant 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 December 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on October 18, 2001.

In a Notice of Intent to Deny (NOID) dated September 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 noted discrepancies between the applicant’s claim that he entered the United States before January 1, 1982 and resided continuously in an unlawful status through the requisite period and documentation in the record that calls into question the veracity of such claim. The director indicated that the discrepancies undermine the credibility of the applicant’s claim, and that the affidavits submitted by the applicant are substantively deficient. The applicant was granted 30 days to submit additional evidence.

In response to the NOID, the applicant provided some explanations to the evidentiary discrepancies cited in the NOID and submitted additional documentation in support of his claim. On March 7, 2008, 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 counsel asserts that the director did not properly evaluate the affidavits submitted by the applicant in support of his application. In counsel's view the documentation in the record is sufficient to establish that the applicant meets the continuous residence requirement for legalization under the LIFE Act. The applicant submits an additional affidavit 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 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:

- Affidavits – dated in 2001 and 2008 – from two individuals who claim to have known the applicant resided in the United States since 1981.

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

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period for LIFE legalization. For someone claiming to have lived in the United States since 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following seven years through May 4, 1988.

The applicant's claim that he entered the United States before January 1, 1982, and resided continuously in the country through May 4, 1988, is contradicted by other documentation in the record. For example, a Form G-325A (Biographic Information) signed by the applicant under penalty of perjury and dated March 5, 1996, which he submitted with a previous Form I-485 in March 1996, the applicant stated that his last address outside the United States of more than one year was [REDACTED], from birth to June 1988. A copy of a Form I-94 (Arrival/Departure Record) in the file shows that the applicant entered the United States on June

18, 1988, through New York City and was admitted as a B-2 visitor. A copy of the applicant's expired passport in the file shows that the applicant was issued a passport in Dakar, Senegal on February 11, 1984, which was renewed in Dakar, Senegal on February 25, 1987. The passport contains a stamp by the United States Embassy in Rabat, Morocco, showing that the applicant was issued a B-2 visa at the Embassy on June 14, 1988, which the applicant used to enter the United States on June 18, 1988. On the Form I-687 (application for status as a temporary resident) dated June 25, 1990, the applicant stated that he last entered the United States on December 15, 1981, and that he traveled outside the United States twice during the 1980s. The first trip to Senegal was from February to March 1984, and the second trip was from May to June 1988. The applicant did not provide specific dates for the trips he claimed on the Form I-687. The only objective evidence of the applicant's presence in the United States during the 1980s was his entry on June 18, 1988 through New York City, as evidenced by a copy of the Form I-94 in the record. This entry is consistent with the information provided by the applicant on the Form G-325A dated March 5, 1996, as well as the two Forms I-130 (petition for alien relative) filed on behalf of the applicant 1992 and 1996.

The applicant could not account for his presence in Senegal on February 25, 1987, when his passport was renewed in Senegal. Neither did he provide any explanation for the information on the Form G-325A about his residence outside the United States during most of the 1980s. The contradictory information discussed above regarding the applicant's initial entry into the United States and his continuous residence in the country casts considerable doubt on the veracity of the applicant's claim that he entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988. 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.*

As noted above, 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 affidavits from two individuals who claim to have known the applicant resided in the United States during the 1980s – is suspect and not credible. The affidavits have minimalist or fill-in-the-blank format with very few details about the applicant's life in the United States. Although the affiants claim to have known the applicant since 1981, the affiants provide remarkably little information about the applicant's life in the United States and their interaction with him over the years. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationships with the applicant in the United States during the 1980s. Although affiant [REDACTED] claims that he acquired his knowledge about the applicant's presence in the United States because they used to live “around the same area in New York City,” he provided no additional details such as an address of the place. In view of these substantive shortcomings, the affidavits have little probative value. They are not persuasive

evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Based on the analysis of the evidence in the record, the AAO finds 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.