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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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[REDACTED]

FILE:

MSC 01 296 60663

Office: NEW YORK

Date:

JAN 15 2010

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. 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.

Perry Rhew
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, 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 resided in the United States in a continuous, unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant submits a copy of his I-94 card and a copy of his United States visa with an entry stamp both dated in 1987. He also submits copies of his New York State Identification, social security card and consulate identification card, dated in 1988. The applicant requests that the director's decision be reconsidered. The AAO has reviewed all of the evidence and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.¹

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 must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date through May 4, 1988. *See* § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant 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 section 1104 of the LIFE Act. 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence

¹ 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).

produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.12(f). 8 C.F.R. § 245a.2(d)(6).

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.* at 80. 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 or petitioner 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).

On July 23, 2001, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to section 1104 of the Life Act (I-485 LIFE Legalization Application). The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982, and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and resided in an unlawful status during the requisite period consists of nine attestations from individuals claiming to know the applicant and a copy of the applicant's passport. The AAO has reviewed each document to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The record includes declarations from [REDACTED] at Masjid Malcolm Shabazz. The declarations fail to meet the requirements under the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The declarant failed to state where the applicant resided during membership period, established how the author knows the applicant, or established the origin of the information being attested to. Given the lack of relevant details, the declarations provide minimal probative value as evidence of the applicant's residency during the requisite period. In addition, the record contains the applicant's Form I-687, Application for Status as a Temporary

Resident. In his Form I-687, at Question 34, the applicant was asked to list all affiliations or associations with clubs, organizations, etc. The applicant failed to mention that he was ever a member of this organization or any other organization. This discrepancy detracts from the credibility of the applicant's claim.

The record contains a declaration from the clerk at the [REDACTED]. The declarant stated that the applicant resided at the hotel at [REDACTED] in New York from January 1981 to August 1987. The declaration fails to provide sufficient information to indicate that the declarant had direct personal knowledge of the events or circumstances of the applicant's residency. The declaration provides minimal probative value as evidence of the applicant's residence during the requisite period. It is also noted that, in his Form I-687, the applicant stated that he resided at [REDACTED] from November 1981 to September 1991. This inconsistency seriously detracts from the credibility of his claim.

The record contains seven form affidavits which are general in nature and state that the affiants have knowledge of the applicant's residence in the United States for all of the requisite period. These affidavits fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they have a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The record also contains a copy of the applicant's passport which includes a copy of his United States B-1 visa, issued on September 9, 1987. The passport also contains admittance stamps, dated September 23, 1987, and November 18, 1987. This evidence establishes the applicant's presence in the United States in September 1987.

Based upon the evidence, the documents submitted in support of the applicant's claim have been found to be inconsistent and to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. The applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1,

1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.

1. form affdvt Bernard Lewis – app resided in US in NY City from Dec 1981 to present (2001); first met app at a flea market in the Bronx in 1981
2. form affdvt Carl Mattheus - known app resided in NY from Jan 1981 to August 1987; he was his partner
3. form affdvts Mor Talla Fall – known app resided in US from November 1981 to Present; inconsistent with previous declarant; states app resided at 230 West 54th Street
4. form affdvt Yamar Hiang – known app resided at 230 West 54th Street from November 1981 to Sept 1991; used to sell goods in the streets of the city; friend
5. form affdvt Madieng Ndiaye – app resided in US from November 1981 to present; met in city in 1981
6. form affdvt Madiaye Ngom – app resided in US from November 1981 to present; met in 1981
7. aff of residence Serigne Mbacke Samb – app resided at 230 West 54th Street with him from November 1981 to September 1991