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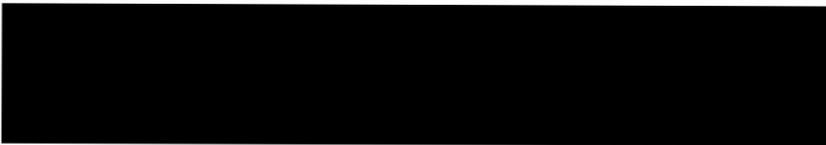
Office: DETROIT

Date: **MAY 25 2007**

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, of if the matter 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Detroit, Michigan, and is now before the Administrative Appeals Office (AAO) on appeal. The AAO remands the case for further action and consideration.

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The director found that the applicant was in lawful status during the period because, in spite of the applicant's claim to have resided in the United States since before January 1, 1981, the applicant reentered the United States with inspection in B-2 status in 1986.

On appeal, the applicant asserts that he was merely returning to his previously established unlawful residence when he reentered the United States with a B-2 visa in 1986.

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.
- (ii) Nonimmigrants – In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, such alien must establish that the period of authorized stay as a nonimmigrant expired before such date through the passage of time or that the alien's unlawful status was known to the Government as of such date.

The word "Government" means the government of the United States. An alien who claims his unlawful status was known to the government as of January 1, 1982, must establish that prior to January 1, 1982, documents existed in one or more government agencies so, when such documentation is taken as a whole, it would warrant a finding that the alien's status in the United States was unlawful. *Matter of P- 19 I. & N. Dec. 823 (Comm. 1988).*

Congress provided only two ways in which an applicant who had been admitted as a nonimmigrant could establish eligibility for permanent residence under the LIFE Act. The first was to clearly demonstrate the authorized period of stay expired prior to January 1, 1982. The second was to show that, although the authorized stay had not expired as of January 1, 1982, the applicant was nevertheless in an unlawful status that was known to the Government as of that date. In doing so, Congress acknowledged it was possible to have an authorized stay and yet still be unlawful due to

another reason, such as illegal employment. However, the LIFE Act very clearly states that the unlawfulness had to have been known to the Government as of January 1, 1982.

Pursuant to section 1104(c)(2)(B)(i) of the LIFE Act, the regulations prescribed by the Attorney General under section 245A(g) of the INA that were most recently in effect before the date of the enactment of the LIFE Act shall apply to determine whether an alien maintained continuous unlawful residence in the United States. Therefore, eligibility also exists for an alien who would otherwise be eligible for legalization and who was present in the United States in an unlawful status prior to January 1, 1982, and reentered the United States as a nonimmigrant in order to return to an unrelinquished unlawful residence. 8 C.F.R. §245a.2(b)(9). An alien described in this paragraph must receive a waiver of the inadmissibility charge as an alien who entered the United States by fraud. Section 212(a)(6)(C) [previously number Section 212(a)(19)] of the INA, 8 U.S.C. § 1182(a)(6)(c); 8 C.F.R. § 245a.2(b)(10).

The director stated in her decision that a “review of [the applicant’s] record revealed that [the applicant] first entered the United States as a B-2 visitor . . . on January 4, 1981” and remained in the United States after the expiration of his authorized period of stay. However, the record contains no evidence apart from the applicant’s testimony showing that the applicant was admitted in lawful status in 1981. There is insufficient evidence to support a finding that the applicant was in lawful status during the qualifying period. Regardless, were the applicant admitted in lawful status on January 4, 1981, his period of authorized stay likely would have expired prior to January 1, 1982. The applicant likely would have established unlawful residency prior to his exit in December 1985 and reentry with a visa in January 1986 (of which the record also lacks evidence), and the applicant’s return with a visa would not render him ineligible for adjustment of status to permanent resident under the LIFE Act. Under such circumstances, however, the applicant would still be required to obtain a waiver of the inadmissibility charge as an alien who entered the United States by fraud.

Neither the NOID nor the director’s decision contain sufficient analysis of the evidence of residency or other eligibility criteria to determine if the applicant is eligible for permanent resident status under the LIFE Act. The record contains no evidence showing that the applicant has sought a waiver of inadmissibility or been given notice and opportunity to apply for such a waiver. Accordingly, the case must be remanded to the director for entry of a new decision addressing the issues noted herein.

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 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 or petition.

Although Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. *See* 8 C.F.R. § 245a.2(d)(3)(v).

Nevertheless, an affidavit not meeting all the foregoing requirements may still merit consideration as “any other relevant document” pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must be on employer letterhead stationery, if the employer has such stationery, and must include the following:

- (A) Alien’s address at the time of employment;
- (B) Exact period of employment;
- (C) Periods of layoff;
- (D) Duties with the company;
- (E) Whether or not the information was taken from official company records; and
- (F) Where records are located and whether the Service may have access to the records.

The regulation further allows that if official company records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and explaining why such records are unavailable may be submitted in lieu of meeting the requirements at (E) and (F) above.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence throughout the application process:

- A letter dated June 21, 1990 from the Egyptian Consulate in New York stating that the applicant has registered yearly with the Consulate since September 14, 1981.
- An affidavit notarized on April 26, 1990 from [REDACTED] stating that he shared an apartment with the applicant at [REDACTED] in Flushing, New York from January 1981 to December 1983.
- An affidavit notarized on April 26, 1990 from [REDACTED] stating that he shared an apartment with the applicant at [REDACTED] in Brooklyn, New York from January 1984 to June 1986.
- An affidavit notarized on April 26, 1990 from [REDACTED] stating that he shared an apartment with the applicant at [REDACTED] in Brooklyn, New York from July 1986 to December 1988.

A letter dated March 22, 1990 from [REDACTED] of Travel Wise Team Inc. in New York, New York stating that the applicant was employed as a messenger from July 1986 to December 1988.

- A letter dated March 21, 1990 from [REDACTED] of Family Food Center in Brooklyn, New York stating that the applicant was employed as a stockman from January 1984 to June 1986.
- A letter dated March 20, 1990 from [REDACTED] of the Reliance Travel Service Inc. in New York, New York stating that the applicant worked for the company as a messenger from January 1981 to December 1983.
- A savings account book from the Greater New York Savings Bank showing transactions from June 1, 1981 through January 28, 1987.

Two envelopes addressed to the applicant at [REDACTED] in Brooklyn, New York and postmarked in 1985 and 1986 respectively.

The AAO notes that the affidavits and letters submitted by the applicant contain minimal detail and some—particularly the affidavits of [REDACTED] and [REDACTED]—are not amenable to verification because they lack contact information for the affiants. The director may wish to verify

the testimony provided in these affidavits and letters and confirm the authenticity of the other documents submitted by the applicant prior to issuing a new decision.

Accordingly, the matter will be remanded to the director for entry of a new decision consistent with the foregoing. If the director determines that the application should be denied, the director shall issue a Notice of Intent to Deny containing a detailed statement of the basis for the proposed denial, and the applicant must be granted a period of 30 days to respond to this notice. If, following this period, the director's final decision is adverse to the applicant, it shall be certified to the AAO for review.

**ORDER:** The director's decision is withdrawn. The matter is remanded to the director for entry of a new decision consistent with the foregoing. If this decision is adverse to the applicant, it shall be certified to the AAO for review.