**U.S. Department of Homeland Security**
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: APR 16 2007

MSC 02 057 61604

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:

[redacted]

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, Los Angeles, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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.

On appeal, counsel submits additional evidence and asserts that the evidence in the record shows the applicant resided continuously in the United States from prior to January 1, 1982 through May 4, 1988.

An applicant for permanent resident status 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 and through May 4, 1988. 8 C.F.R. § 245a.11(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 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 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).

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).

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.

Here, the submitted evidence is not relevant, probative, and credible.

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 declaration dated January 26, 2005 from stating that he has known the applicant since October 1981 when they lived in the same building. states that the applicant resided at in Los Angeles, California from October 1981 to September 1985 and that they saw each other every Friday afternoon.

- A declaration dated January 25, 2005 from s stating that he has known the applicant since February 5, 1986 when the applicant lived on the same street at in Pacoima, California. states that the applicant lived at this address until September 1988.

- An affidavit notarized on January 19, 2005 from stating that he employed the applicant as a plumber's helper from November 15, 1981 to November 1983 and rented a house to the applicant from 1984 to 1987.

- Statement of earnings from the Social Security Administration showing earnings for the applicant in 1984 and 1985 and from 1988 to 2003.

- An affidavit notarized on October 17, 2001 from stating that he has known the applicant as a friend since 1981.

- An affidavit notarized on June 13, 2001 from stating that he has known the applicant since 1981 and rented a house to the applicant from 1984 to 1987.

- A letter dated July 14, 1988 from Vice President of Valley Crest Tree Company, stating that the applicant worked as a nurseryman with the company from January 3, 1984 through May 23, 1985.

- Various pay stubs from Valley Crest Tree Company, one covering a pay period in 1984 and the others covering pay periods subsequent to May 4, 1988.

- An undated letter from stating that he has known the applicant since October 1981 when they "lived in the same apartment building." also states that he and the applicant "work in the same company up to the present."

On November 17, 2004, the director issued a Notice of Intent to Deny (NOID) stating that the applicant had "furnished no documentation in support of [the applicant's] claim of residency from 1981 to 1983 and 1986 to 1987 other than an employment letters and affidavits." The director observed that the employment letter did not meet the requirements for employment verification under 8 C.F.R. § 245a.15(b)(1) and 8 C.F.R. § 245a.2(d)(3). The director determined that the affidavits submitted by the applicant "lacked weight in evidence" because they did not "contain sufficient information" and were not "accompanied by corroborative documents."

In the decision to deny the application dated December 27, 2004, the director noted that the applicant had failed to submit a rebuttal to the NOID and denied the application for the reasons stated in the NOID.

On appeal, counsel asserts that the evidence in the record shows the applicant resided continuously in the United States from prior to January 1, 1982 through May 4, 1988. Counsel submits the 2005 affidavits from and on appeal. Counsel contends that these and the other affidavits from and demonstrate that the applicant was present in the United States during the qualifying period. Counsel asserts that the applicant's social security earnings statement does not list earnings for the applicant for the years 1981 through 1983 because the applicant did not obtain a social security number until 1983 and was paid in cash by his

employer Counsel also asserts that the applicant was paid cash by the Valley Crest Tree Company from 1986 to 1987, which explains why these earnings do not appear as social security earnings.

After reviewing all the evidence in the record, including the evidence presented on appeal, the AAO determines that the submitted evidence of residency for the years 1982 through 1983 and 1986 through 1987 is not relevant, probative, and credible.

Not only does the employment verification letter from not meet the regulatory requirements found at 8 C.F.R. § 245a.2(d)(3)(i), gives no indication that the Valley Crest Tree Company employed the applicant in the years 1986 and 1987 as claimed by the applicant. The applicant also submitted letters from , Office Manager at Valley Crest, indicating that the company has employed the applicant subsequent to May 4, 1988. does not indicate that the company employed the applicant during the years 1986 and 1987 either. The fact that the applicant has been able to provide proof of his employment—which includes pay stubs in addition to the aforementioned letters—at Valley Crest during other periods suggests that he would also be able to provide proof of his employment at the company in 1986 and 1987 if indeed he was employed by the company during that period.

Moreover, certain information in the affidavits submitted by the applicant is inconsistent with information provided by the applicant on his Form I-687, Application for Status as a Temporary Resident. On that form, the applicant indicated that he worked as a "driver" for "Luch Track" from October 1981 to January 1984, rather than as a plumber's helper to Furthermore, although does not list the address of the house he rented to the applicant from 1984 to 1987, the applicant's I-687 indicates that the applicant had three different residences during that period. Likewise, indicates that the applicant resided at in Pacoima, California from 1986 to 1988, but the applicant does not list this address as one of his residences on his Form I-687. affidavit fails to indicate the addresses at which the applicant resided during acquaintance with him, or provide any significant details concerning the nature of their acquaintance.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The applicant has submitted inconsistent evidence of residency. It is reasonable to expect him to explain why he has submitted contradictory information and adequately resolve the contradictions through credible evidence. It is reasonable to expect the applicant to submit explanations from affiants providing testimony that contradicts other evidence submitted by the applicant. The applicant has failed to present sufficient credible evidence of residency to adequately address the discrepancies noted herein. Rather than resolve the inconsistencies in the evidence, the applicant's submissions on appeal contain additional inconsistencies that serve only to raise questions about the authenticity of the remaining documents the

applicant has presented in attempt to prove continuous residence in the United States prior to January 1, 1982 through May 4, 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).

Given the inconsistency and insufficiency of the evidence, 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, and 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).

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