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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: ATLANTA Date: DEC 14 2007
MSC 01 303 60169

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, or if your case 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, Atlanta, 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 since before January 1, 1982 through May 4, 1988. Specifically, the director determined that affidavits alone were insufficient to satisfy the applicant's burden of proof in these proceedings.

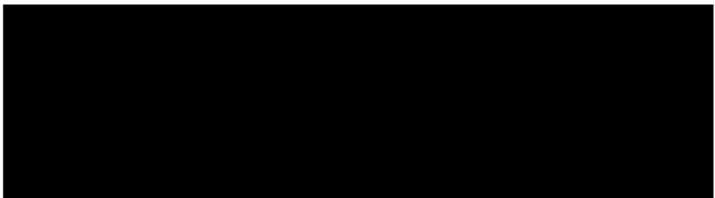
On appeal, newly-retained counsel submits new evidence in support of the applicant's eligibility for permanent resident status under the LIFE Act, and further alleges that negligence on the part of the applicant's former counsel contributed to the deficiencies in the record at the time of adjudication.

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).

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).

In the affidavit for class membership, which he signed under penalty of perjury, the applicant stated that he first arrived in the United States in July 1981, when he crossed the border without inspection. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury, the applicant claimed to live at the following addresses in California during the requisite period:

July 1981 to December 1981:
January 1982 to January 1983:
February 1983 to February 1985:
March 1985 to June 1987:
July 1987 to June 1990:



In an attempt to establish continuous unlawful residence in the United States since before January 1982 through 1988, the applicant furnished the following evidence:

- (1) Employment letter dated September 15, 1990 from [REDACTED], located in North Hollywood, California, which states that the applicant worked for the company from July 1981 until June 1984 as a driver. The letter is signed by an unknown person under the title of "Employer."
- (2) Employment letter dated September 15, 1990 from Marjory [REDACTED] of [REDACTED] Indian and Bangladesh Restaurant, located in North Hollywood, California, which states that the applicant worked for the company from June 1984 until July 1990 as a waiter.
- (3) Affidavit dated September 15, 1990 from A [REDACTED], stating that he met the applicant in July of 1981 through mutual friends. The affiant claims that the applicant resided in

Hollywood, California from July 1981 to February 1985 and North Hollywood, California from March 1985 to June 1990. He does not state the basis of his claimed knowledge of the applicant.

- (4) Affidavit dated September 15, 1990 from [REDACTED], stating that she met the applicant in July of 1981 through mutual friends. The affiant claims that the applicant resided in Hollywood, California from July 1981 to February 1985 and North Hollywood, California from March 1985 to June 1990. She does not state the basis of her claimed knowledge of the applicant. The AAO notes that this affidavit is identical to the September 15, 1990 affidavit of [REDACTED].
- (5) Affidavit dated September 15, 1990 from [REDACTED], stating that he is the co-tenant of the applicant and that he resided at [REDACTED], North Hollywood, California from July 1987 to June 1990. The affiant fails to clarify whether they previously lived in the same apartment or residence on [REDACTED] or whether they currently reside together as co-tenants.
- (6) Letter dated May 10, 1990 from [REDACTED], President of Muslim Student Society at Claremont, claiming that he has known the applicant since August of 1981 and that he has been a member of the organization from August 1981 to the present.
- (7) Corroborative affidavit dated May 18, 1990 from [REDACTED], stating that the applicant departed the United States on August 12, 1987 and re-entered the United States illegally on September 23, 1987. The affiant does not state the basis of his claimed knowledge of the applicant's departure and arrival.
- (8) Letter dated September 25, 2002 and notarized on December 3, 2002 from [REDACTED] stating that he has known the applicant since 1981 and that the applicant is a man "with integrity, honesty and dignity."
- (9) Letter dated September 20, 2002 and notarized on November 21, 2002 from [REDACTED], stating that he has known the applicant since 1987 and that he attests to the applicant's character, integrity and reliability. He does not state the basis of his claimed knowledge of the applicant.
- (10) Affidavit dated April 26, 2001 from [REDACTED], brother-in-law of the applicant, stating that the applicant married [REDACTED] on May 12, 1985 and that she gave birth to their two children, namely [REDACTED] on October 11, 1986 and [REDACTED] on September 17, 1996.
- (11) Affidavit dated April 26, 2001 from [REDACTED], brother of the applicant, stating that the applicant married [REDACTED] on May 12, 1985 and that she gave birth to their two children, namely [REDACTED] on October 11, 1986 and [REDACTED] on September 17, 1996.¹

¹ It is noted that this affidavit, and that of [REDACTED], are both dated April 26, 2001 by the deponents. However, the Advocate listed on each affidavit claims that the deponents signed in his

- (12) Notarized Model Declaration in Support of Group 1 Membership dated August 18, 1999 from the applicant, claiming that on September 23, 1987 after he returned from Bangladesh he obtained a legalization application from the INS office in North Hollywood, California, and was accompanied by his friend [REDACTED]
- (13) Notarized Declaration of Corroborating Witness dated August 19, 1999 from [REDACTED] claiming that he accompanied the applicant to the INS office in North Hollywood, California, and witnessed the applicant file his legalization application. The affiant does not state the date upon which this occurred.
- (14) Photocopies of envelopes with canceled postmarks which were addressed to the applicant at his various addresses in California, as set forth below:
- Letter addressed to the applicant at [REDACTED] California, postmarked on August 27, 1981;
 - Letter addressed to the applicant at [REDACTED] Hollywood, California postmarked in 1982 (exact date not legible);
 - Letter addressed to the applicant at [REDACTED] Hollywood, California, postmarked on March 16, 1983;
 - Letter addressed to the applicant at [REDACTED] N. Hollywood, California, postmarked in 1985 (exact date not legible);
 - Letter addressed to the applicant at [REDACTED] N. Hollywood, California, postmarked in 1986 (exact date not legible);

On November 12, 2004, CIS issued a Notice of Intent to Deny (NOID) the application. The district director noted that the record did not contain credible and verifiable evidence that the applicant continually maintained an unlawful status in the United States since before January 1, 1982 through 1988, as well as maintained continuous physical presence in the United States from November 6, 1986 through May 4, 1988. The director noted that the applicant had previously been given two opportunities to supplement the record in response to requests for evidence issued on January 23, 2003 and July 11, 2003, and noted that former counsel for the applicant had responded to the most recent request on December 10, 2003 by advising the director that there was no further evidence available for consideration and that the record should be treated as complete. Despite counsel's statement in this response, the applicant was once again afforded the opportunity to submit additional evidence in support of the application. Neither counsel nor the applicant responded to the NOID.

Consequently, the director denied the application on February 18, 2005, noting that there was insufficient evidence to show that the applicant entered and maintained continuous unlawful status in the United States from before January 1, 1982, the beginning of the qualifying period, through 1988, or that he had maintained continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Although

presence on April 22, 2001. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

the director noted the applicant's numerous affidavits of acquaintance, the director noted there was no evidence of the applicant's entry prior to January 1, 1982 and no evidence of his continued presence in the United States through 1988.

On appeal, newly-retained counsel for the applicant makes two assertions. First, counsel claims that the applicant's former counsel was negligent by failing to respond to the request for evidence, and claims that the applicant should not be penalized for former counsel's omissions. Specifically, counsel asserts that the applicant provided former counsel with all relevant documentation prior to adjudication and was unaware that former counsel had failed to respond to the second request for evidence or the NOID. Second, counsel on appeal asserts that the applicant did in fact enter the United States prior to 1982 and maintained continuous unlawful presence since 1981 through 1988, and thus is eligible to adjust to permanent resident status. In support of this contention, counsel re-submits the previously-submitted affidavits and employment letters, along with a new affidavit from Marjory Kadir dated April 24, 2006 in support of the applicant's employment at Salomi Restaurant from 1984 to 1990.²

Upon review, the AAO concurs with the director's decision.

The first issue to address is the claim that the applicant's prior counsel was negligent in failing to respond to the evidentiary requests of the district director. Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The applicant has failed to include the above-referenced documentation in support of this claim. As a result, this is not an effective basis for this appeal.

The second issue is whether the applicant has submitted sufficient evidence to warrant an adjustment of status to legal permanent residence. 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 quality 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.

² Counsel also submits documentation, such as employment letters, W-2 forms, and Social Security Statements, which support a finding that the applicant has been present and employed in the United States from 1989 until present. The issue before the AAO, however, is whether the applicant was continually present in the United States from before 1982 through 1988; as a result, this evidence is not pertinent to the appeal.

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.

The *Matter of E-- M*—decision provides guidance in assessing evidence of residence, particularly affidavits. In that case, the applicant had established eligibility by submitting (1) the original copy of his Arrival Departure Record (Form I 94), dated August 27, 1981; (2) his passport; (3) affidavits from third party individuals; and (4) an affidavit explaining why additional original documentation is unavailable. Furthermore, the officer who interviewed that applicant recommended approval of the application, albeit, with reservations and suspicion of fraud. In this case, the interviewing officer recommended denial of the application, and there is no Form I-94 or admission stamp in a passport establishing the applicant entered the United States prior to January 1, 1982.

Although the applicant claims he entered the United States in July 1981, he likewise claims that he entered without inspection. As a result, there is no documentary evidence in the form of an arrival-departure record or stamped passport to verify the exact date of entry. The applicant, however, has submitted a copy of an envelope addressed to him at [REDACTED], Hollywood, California, with a postmark dated August 27, 1981. The postmark, coupled with the applicant's claim under the penalty of perjury on Form I-687 that he resided at this address from July 1981 to December 1981 suggests that the applicant was in fact present in the United States prior to January 1, 1982. This claim is further supported by an employment letter from [REDACTED] and affidavits from [REDACTED] and [REDACTED]. While these documents themselves are sparse and lack sufficient detail, they collectively corroborate the claim that the applicant was in fact present in the United States prior to January 1, 1982.³ Therefore, the director's finding that the applicant failed to satisfy this criteria is withdrawn.

In support of his continuous unlawful presence in the United States from 1982 to 1988, the applicant relies on numerous other affidavits as well as the employment letters from [REDACTED] of Salomi Restaurant. These employment letters, although written on employer letterhead, do not meet the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) in that they (1) omit the applicant's address at the time of employment; (2) do not state that the information provided is taken from official company records; and (3) fail to outline the applicant's specific duties with the company during that period. Although CIS will accept, in lieu of an employment letter, an affidavit form-letter stating that the alien's employment records are

³ The AAO notes that the applicant also submits postmarked envelopes from 1982, 1983, 1985 and 1986. However, the postmarks are illegible on all copies but for an envelope postmarked March 16, 1983. This envelope, which is addressed to the applicant at [REDACTED] Hollywood, California, his claimed address during that time period, tends to support a finding that the applicant was present in the United States as claimed in March of 1983. However, the record is devoid of evidence to demonstrate that he was continually present in an unlawful status during the relevant period. One postmarked envelope is simply insufficient to establish his continued presence in the United States.

unavailable and why they are unavailable, as well as the employer's willingness to come forward and give testimony as requested, the statements from these employers omit this information. See 8 C.F.R. § 245.a2(d)(3)(i)(F).⁴

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation. Although numerous affidavits of acquaintance have been submitted, the documents are inadequate and do not contain enough information to support a credible finding that the applicant was continually maintaining an unlawful status in the United States between 1982 to 1988.

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 from organizations 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).

While these standards are not to be rigidly applied, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in such basic and necessary information.

The affidavits submitted in support of the applicant's continuous unlawful status between 1982 and 1988 fall far short of meeting the above criteria. The numerous affidavits of Ahmed Hussain merely claim that he knew the applicant since 1981 and that he attests to his character. While he also claims that he accompanied the applicant to the INS office in North Hollywood, California, in order to file his legalization application, he omits the date of this occurrence. Furthermore, the affidavit from Mohammed Hamid omits specific information regarding his relationship with the applicant, and the affidavit from Ali-Al-Mazroi omits the applicant's address and other identifying information pertaining to the applicant. These brief and somewhat generic statements fail to conform to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3).

⁴ It is noted that the applicant submits for the first time on appeal an affidavit from Marjory Kadir, dated April 24, 2006, in support of the applicant's employment in the United States from 1984 to 1990. The applicant, however, was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the application was adjudicated. The applicant failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

Finally, the applicant has likewise failed to establish his continuous physical presence in the United States from November 6, 1986 to May 4, 1988. The applicant claims that he departed the United States from August 1987 to September 1987. In support of this contention, he submits an affidavit from [REDACTED] stating that the applicant departed the United States on August 12, 1987 and re-entered the United States illegally on September 23, 1987. The affiant, however, does not state the basis of his claimed knowledge of the applicant's departure and arrival, nor does he state the basis of their relationship or the manner in which this knowledge was acquired. This affidavit alone is insufficient to corroborate the applicant's claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Given the absence of contemporaneous documentation and the reliance on affidavits which do not meet basic standards of probative value, it is concluded that the applicant has failed to establish, by a preponderance of evidence, that he continuously resided in the United States in an unlawful status from January 1, 1982 through 1988. Therefore, the applicant is 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.