



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
MSC 02 145 62057

Office: DALLAS, TEXAS

Date: DEC 20 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: Self-Represented

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 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 late legalization provisions of the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not established that she 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. The director specified that information in the record indicated that the applicant entered the United States as a nonimmigrant during August 1981, but she had failed to show that her authorized period of stay as a nonimmigrant had expired before January 1, 1982 through the passage of time, or that her unlawful status became known to the Government prior to January 1, 1982. The director also indicated that the applicant failed to provide sufficient, credible evidence that she was continuously present in the United States during the statutory period. Finally, the director indicated that when the applicant entered as a nonimmigrant during May 1987 and January 1988, she acquired lawful status in the United States, and as such could not demonstrate continuous unlawful presence from January 1, 1982 through May 4, 1988.

On appeal, the applicant asserts that she did maintain continuous unlawful residence in the United States during the statutory period.

The regulation at 8 C.F.R. § 245a.2(b) provides in pertinent part:

(b) Eligibility. The following categories of aliens, who are otherwise eligible to apply for legalization, may file for adjustment to temporary residence status:

(9) An alien who would be otherwise 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, such entry being documented on Service Form I-94, Arrival-Departure Record, in order to return to an unrelinquished unlawful residence.

(10) An alien described in paragraph (b)(9) of this section must receive a waiver of the excludable charge 212(a)(19) as an alien who entered the United States by fraud.

The ground of excludability at section 212(a)(19) of the Act has been replaced by the ground of inadmissibility listed at section 212(a)(6)(C)(i) of the Act, as amended.

Section 212(a)(6)(C) of the Act provides in pertinent part:

Misrepresentation. – (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

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 LIFE Act § 1104(c)(2)(B) and 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 states 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 petitioner 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 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).

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

On September 8, 1990, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On February 22, 2002, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The applicant filed the following documents in support of her claim that she resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988:

1. The Form I-687, Application for Status as a Temporary Resident, which the applicant signed under penalty of perjury on July 15, 1990. At Item 16 of this form the applicant indicated that she first entered the United States on August 18, 1981. At Item #1 of the form the applicant indicated that she entered the United States on a nonimmigrant visa prior to January 1, 1982.
2. The applicant's statement made on appeal which indicates that she first entered the United States on August 8, 1981.
3. The statement of Brother [REDACTED] of New Jersey dated August 16, 2003 which indicates that Mr. [REDACTED] met the applicant during 1980 at the [REDACTED] in [REDACTED].

Teaneck, New Jersey. This statement is stamped by a notary licensed by the State of Texas. The notary stamped the document only to confirm that it is a certified copy of Mr. [REDACTED] original statement. The notary does not indicate that Mr. [REDACTED] signed this statement before her, nor that he swore to the truthfulness of the statement before her. The notary does not indicate on what date she stamped and signed the document.

4. The statement of [REDACTED], N.J. dated June 5, 1990 which attests that the affiant met the applicant in the United States during Ramadan July 1981 and that the affiant has personal knowledge that the applicant resided at:

- [REDACTED] 8/1981 through 12/1986;
- [REDACTED] from 12/1986 through 12/1989; and
- [REDACTED] from 12/1989 through the date on which this affidavit was signed.

This office finds that this statement has not been duly notarized in that the notary left blank the space in which she was to list the city in which she witnessed Mr. [REDACTED] sign and swear to the statement.

5. The notarized affidavit of [REDACTED] of Madison, N.J. dated June 4, 1990 which attests that the affiant met the applicant in the United States during Ramadan July 1981 and that the affiant has personal knowledge that the applicant resided at:

- [REDACTED], Paterson, N.J. from 8/1981 through 12/1986;
- [REDACTED], Spring Valley, N.Y. from 12/1986 through 12/1989; and
- [REDACTED], Paterson, N.J. from 12/1989 through the date on which this affidavit was signed.

6. The notarized affidavit of [REDACTED] dated June 4, 1990 which attests that the affiant met the applicant during May 1983 and that the affiant has personal knowledge that the applicant resided at:

- a. [REDACTED] Paterson, N.J. from 8/1981 through 12/1986;
- b. [REDACTED] Spring Valley, N.Y. from 12/1986 through 12/1989; and
- c. [REDACTED] Paterson, N.J. from 12/1989 through the date on which this affidavit was signed.

7. The statement of [REDACTED] Sattaur of the [REDACTED] Caribbean Islamic Movement, Inc. of New York City dated August 25, 2003 which indicates that the applicant attended prayers at Mr. [REDACTED]'s mosque regularly from 1981 through 1986. This statement is stamped by a notary licensed in the state of Texas. The notary indicated that he stamped the document only to confirm that it is a certified copy of Mr. [REDACTED]'s original statement. The notary does not indicate that Mr. [REDACTED] signed this statement before him, nor that Mr. [REDACTED] swore to the truthfulness of the statement before him. The notary does not indicate on what date he stamped and signed the document.

8. A letter dated January 15, 1990 which indicates that the applicant worked at an agency named [REDACTED] in Paterson, N.J. from September 1981 through May 1985. The person who signed the letter did not identify her title at the agency. The letter is not notarized. In the dateline of the letter is an error such that January 15, 1990 is written as January 15-1990. The person who wrote the letter is apparently not completely fluent in English and stated that the applicant "was working for this Agency"... "as a office maintenance."
9. A letter also dated January 15, 1990 which indicates that the applicant worked for a company named [REDACTED] in Union City, New Jersey from July 1988 through the date that the letter was signed. The person who signed the letter did not identify his title at this company. The letter is not notarized. In the dateline of the letter is an error such that January 15, 1990 is written as January 15-1990. The person who wrote the letter is apparently not completely fluent in English and stated that the applicant "was working for this Company as a cleaner sevice." The font used in this letter appears to match that used in the letter described at #7 above.
10. A letter dated June 8, 1990 which indicates that from May 1985 through September 1988 the applicant was an employee at [REDACTED] Travel Agency in Paterson, New Jersey. The letter is not notarized. [REDACTED] who wrote the letter identified himself only as the "Manager" and stated that the applicant worked for this "Agency as a cleaner lady." The font in this letter also appears to match that used in the letters described at #7 and #8 above.
11. The notarized affidavit of [REDACTED] dated June 5, 1990 which attests that the affiant has personal knowledge that the applicant resided at:
 - a. [REDACTED] J. from 8/1981 through 12/1986;
 - b. [REDACTED] N.Y. from 12/1986 through 12/1989; and
 - c. [REDACTED] N.J. from 12/1989 through the date on which this affidavit was signed.

The affiant did not indicate when she met the applicant in the United States on the affidavit. She did attest that during five years and six months of the 1981 through 1990 period of residence listed above, the affiant did not see the applicant.

12. The notarized affidavit of [REDACTED] dated June 5, 1990 which attests that the affiant has personal knowledge that the applicant resided at:
 - a. [REDACTED] h, N.J. from 8/1981 through 12/1986;
 - b. [REDACTED] ey, N.Y. from 12/1986 through 12/1989; and
 - c. [REDACTED] N.J. from 12/1989 through the date on which this affidavit was signed.

The affiant did not indicate when she met the applicant in the United States on the affidavit. She did attest that during two years of the 1981 through 1990 period of residence listed above, the affiant did not see the applicant.

13. The notarized affidavit of [REDACTED] dated June 5, 1990 which attests that the affiant has personal knowledge that the applicant resided at:
- a. [REDACTED] n, N.J. from 8/1981 through 12/1986;
 - b. [REDACTED] . from 12/1986 through 12/1989; and
 - c. [REDACTED] J. from 12/1989 through the date on which this affidavit was signed.

The affiant did not indicate when he met the applicant in the United States on the affidavit. He did attest that during at least one four month period of the 1981 through 1990 period of residence listed above the affiant did not see the applicant.

14. The letter written by a Personal Banking Representative with the Trust Company of New Jersey dated April 5, 1990 which states that the applicant has had a savings account at that institution since August 1982. The letter does indicate under what address(es) the applicant had been listed with the Trust Company of New Jersey during 1982 through 1990.
15. The letter written by an [REDACTED] with the offices of Dr. [REDACTED] and Associates that is not dated which indicates that from June 1982 through September 1984 the applicant was a patient at these doctors' offices.
16. The applicant's LULAC class member declaration on which she states that she entered the United States prior to January 1, 1982 and that she did not depart the United States again until approximately May 17, 1987.
17. A copy of the identity page of the applicant's South African passport that indicates the passport was delivered to the applicant in Johannesburg, South Africa on May 7, 1987.
18. A copy of pages 6 and 7 of the applicant's passport which indicate that the applicant received a multiple entry B2 visitor's visa from the U.S. Embassy in Johannesburg on May 16, 1987 and that the applicant entered the United States using this visa on May 23, 1987 and on January 1, 1988. The stamps in the applicant's passport do not indicate when the applicant's period of authorized stay expired subsequent to her 1987 or 1988 entry.
19. A copy of pages 16 and 17 of the applicant's passport which indicate that the applicant received a multiple entry B2 visitor's visa from the U.S. Embassy in Johannesburg on July 19, 1988. She used this visa to enter the United States on March 30, 1989 and to enter the United Kingdom on the following day March 31, 1989 where she was granted a six month period of authorized stay. She also used the multiple entry B2 visa to enter the United States on August 2, 1988.
20. A letter written by the applicant dated September 23, 2003 which indicates that the applicant left her home in Texas and traveled to New York and New Jersey to seek out additional evidence of her continuous unlawful residence during the statutory period. The letter indicates that in New York and New Jersey the applicant discovered that most of the people that she had known in that region had moved, that their businesses had closed down, and that

many others were afraid to acknowledge knowing her out of fear that there would be retribution from the FBI for having done so. Also, representatives at the electricity companies and telephone companies in New York and New Jersey which had served the applicant told her that these companies did not have customer records from as far back as 1981 through 1988. Thus, the only evidence that the applicant was able to obtain in New York and New Jersey were letters from places of worship that she had attended during the statutory period.

21. A letter written by a representative of an office of the U.S. Social Security Administration based in McKinney, Texas dated December 23, 2004 which indicates that the applicant received a Social Security number during 1990. The letter also indicates that it is possible that the applicant may have filed an application for a Social Security number in the early 1980s, but was denied. However, the Social Security Administration has no record of such as it does not retain denial dates in its records system.
22. A letter written by [REDACTED] dated January 23, 2002 which indicates that Mr. [REDACTED] met the applicant at [REDACTED] mosque in New York on some unspecified date in 1981. The letter is stamped by notary [REDACTED]. However, the notary does not indicate that Mr. [REDACTED] swore to the truthfulness of the letter, that Mr. [REDACTED] signed the letter before her, or on what date she stamped the letter.
23. A notarized letter written by [REDACTED] of Woodside, New York dated January 29, 2002 which indicates that Ms. [REDACTED] met the applicant at an unspecified mosque in New York on an unspecified date during the summer of 1981. It also indicates that Ms. [REDACTED] has been friends with the applicant since that time and that the two would see each other at the Chestnut [REDACTED] and that after the applicant moved away from New York they would contact each other by telephone.
24. A notarized statement written by [REDACTED] dated January 21, 2002 which indicates that Mr. [REDACTED] met the applicant and her husband at "the Chicago airport" on July 13, 1982. According to this statement, the two of them visited Mr. [REDACTED] in metro-Chicago again during 1984 and 1986.

The applicant also submitted other documents that attest to her presence in the United States outside the statutory period. This evidence is not relevant to her claim.

On December 2, 2004, the district director issued a Notice of Intent to Deny (NOID). She indicated that the applicant had entered the United States legally as a nonimmigrant just prior to the statutory period and again during the statutory period. She found that the applicant had not shown unlawful presence in the United States during the statutory period. Also, the director pointed to inconsistencies and deficiencies in the applicant's evidence submitted in support of her claim that she resided continuously in the United States during the statutory period. For instance, the director indicated that the applicant had submitted affidavits which were signed in states such as New York and New Jersey, but were stamped by notaries in Texas. Yet, there was no explanation in the record regarding these apparent inconsistencies. She concluded that the applicant had not provided sufficient evidence to demonstrate continuous presence in the United States during the statutory period.

In response, the applicant submitted a letter which is not dated and which was received by Citizenship and Immigration Services (CIS) on January 3, 2005. In the letter, she indicated that subsequent to her first entry into the United States she reentered the United States using a visitor's visa which she obtained while visiting South Africa. She also indicated that she is trying to obtain more evidence of her continuous unlawful residence in the United States during the statutory period, but that it has proven difficult to do so because so much time has passed since the statutory period. Finally, she explained that the reason that certain documents in the record were signed by residents of New York and New Jersey, but notarized by Texas public notaries, is that these friends from New York and New Jersey were visiting her in Texas when they wrote these statements. Consequently, the statements were notarized in Texas.

On June 7, 2005, the director denied the application. The director pointed out that the applicant provided no additional evidence in response to the NOID to establish her presence in the United States during the statutory period. The director also specified that the applicant failed to rebut the director's claims set forth in the NOID that the record indicated that the applicant had been in the United States lawfully just prior to and during the statutory period. The director specifically noted that, when responding to the NOID, the applicant did not even deny the director's claim that she had been present in the United States legally subsequent to using a B2 visitor's visa to enter during the statutory period.

On appeal, the applicant indicated that she did maintain continuous unlawful presence in the United States beginning in August 1981 and continuing through the statutory period as the only time that she left the United States during this period was to make short emergency trips home to South Africa. She also indicated that she would submit a brief within 30 days of filing her appeal on July 11, 2005. However, to date, this office has not received an appeal brief from the applicant.

The AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO's *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.¹

First, much of the information on the applicant's supporting documents was not consistent with statements which the applicant made on the Form I-687 and statements made on appeal. In addition, inconsistencies exist *within* the claims made on the supporting documents. Also, it appears that certain documents in the record may have been fabricated. The documents submitted are not sufficient to meet the applicant's burden of proof of continuous unlawful residence in the United States during the requisite period.

For example, [REDACTED] stated in her notarized affidavit that she did not meet the applicant until 1983, but she also attested to having personal knowledge that the applicant lived at [REDACTED], New Jersey beginning in August 1981.

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

██████████ stated in her notarized affidavit that she has personal knowledge of the applicant's various addresses in the United States from August 1981 through June 1990. Yet, she also attested to having gone at least one period of five years and six months between August 1981 and June 1990 during which she never saw the applicant.

In her notarized affidavit, ██████████ claimed to have personal knowledge of the applicant's various residences in the United States from August 1981 through June 1990. Yet, she also attested to the fact that for at least one two year period between August 1981 and June 1990 she did not see the applicant.

As noted by the director, the fact that ██████████, a resident of New York, and ██████████, a resident of New Jersey, each had statements in the record that are stamped by notaries licensed in Texas cast doubt on the reliability of these statements. The applicant's explanation that the two of them wrote the statements while visiting her in Texas and that is why the documents were notarized in Texas is not a reasonable explanation, particularly given that the notaries indicate on these documents that they were not present when Mr. ██████████ and Mr. ██████████ signed the documents. Rather, the notaries indicated that they merely looked at copies of Mr. ██████████ and Mr. ██████████ original statements. The notaries did not in fact notarize the statements in that the statements were not signed before them, nor did Mr. ██████████ and Mr. ██████████ attest to the truthfulness of the statements before them.

Consequently, this office finds that the statements of Mr. ██████████, Mr. ██████████, Ms. ██████████, Ms. May and Ms. ██████████ do not have probative value.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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).

In his notarized affidavit, Mr. ██████████ specifies that he met the applicant in the United States during "Ramadan July 1981". Mr. ██████████ also specifies that he met the applicant in the United States during "Ramadan July 1981" in his statement in which the notary failed to list the city in which she witnessed Mr. ██████████ sign and swear to the truthfulness of the document. In his statement, Mr. ██████████ indicated in his statement that he met the applicant in the United States during 1980. Yet, the applicant indicated on the Form I-687 signed under penalty of perjury that she first entered the United States on August 18, 1981. In her statement submitted on appeal, the applicant indicated that she first entered the United States on August 8, 1981. Based on the various inconsistencies between the applicant's own statements regarding when she first entered the United States and when Mr. Abdelhafid, Mr. ██████████ and Mr. ██████████'s statements place her in the United States, this office also finds that the statements of Mr. ██████████ and Mr. ██████████ do not have probative value.

Regarding the applicant's work experience letters, there is a discrepancy in the record in that the Manager at El Mundo Travel Agency indicates that the applicant worked for this agency from May 1985 through September 1988. Yet, on the Form I-687 the applicant stated that she left this company in July 1988.

Also, the representative of the company in Paterson, New Jersey for which the applicant claimed to have worked from September 1981 through May 1985 dated her letter as follows: January 15-1990, rather than using the

correct punctuation as in: January 15, 1990. The representative of the company in Union City, New Jersey for which the applicant claimed to have worked from July 1988 through January 1990 also dated his letter on the same date with the same error in punctuation: January 15-1990.²

The representative of the first company for which the applicant is claiming to have worked in the United States indicated that the applicant "was working for this Agency since September 1981 to May 1985 as a office maintenance." The representative of the third company for which the applicant is claiming to have worked in the United States indicated that the applicant "was working for this Company as a cleaner sevice." The representative of the second company for which the applicant is claiming to have worked in the United States made a similar grammatical error in that he stated that the applicant worked "as a cleaner lady."

The similar, unusual grammatical errors of "was working as a office maintenance", "was working as a cleaner service", and worked "as a cleaner lady" suggest that the letters may have been written by the same person. The use of the exact same date and the existence of the same error in punctuation in the dateline of the two letters bearing the same date create the appearance that these two letters were written by the same person. Finally, the three letters appear to have been written in the same font. Thus, it seems that all three letters may have been written by the same person, rather than by three separate parties representing three completely separate companies in New Jersey. This casts further doubt on the authenticity of the letters.

In the NOID, the director indicated that the letters which the applicant submitted relating to her work experience during the statutory period were not sufficient to establish her presence in the United States during the statutory period. In response, the applicant failed to provide any contemporaneous evidence of having worked for these companies or any other form of evidence to substantiate that she worked for these companies beginning just before the statutory period through the end of the statutory period.

This office finds that the letters in the record which purport to substantiate the applicant's work experience in the United States just before and during the statutory period are not objective, independent evidence such that they might overcome inconsistencies in the record regarding the applicant's claim that she maintained a continuous unlawful residence in the United States from a date prior to January 1, 1982 through May 4, 1988, and these letters do not have probative value.

The applicant indicated on the Form I-687 at Item #1 that she entered the United States as a nonimmigrant prior to January 1, 1982. However, she failed to provide any contemporaneous, objective evidence of this entry. Also, on the Form I-687 at Item #16 she indicated that this entry was made on August 18, 1981. Yet, in her statement made on appeal the applicant indicated that this entry was made on August 8, 1981. This inconsistency in the record taken together with the applicant's failure to provide any independent, objective evidence of the entry casts doubt on whether the applicant did make an entry into the United States prior to January 1, 1982.

² This office acknowledges that according to the statement on the second letter, the work experience acquired in Union City, New Jersey occurred outside the statutory period. Nonetheless, the identical and nearly identical errors on the two letters create the appearance that both letters were written by the same person which casts doubt on the authenticity of both the first letter which refers to experience acquired just prior to and during the statutory period and the second letter.

The notarized affidavit of [REDACTED] in the record indicates that Mr. [REDACTED] has personal knowledge of the applicant residing in the United States from August 1981 through the end of the statutory period. However, Mr. [REDACTED] gave no indication as to when he first met the applicant and attested to the fact that during the period of August 1981 through June 1990 there were period(s) during which as much as four months would pass that he did not see the applicant. This affidavit does not amount to objective, independent evidence of the applicant's continuance residence in the United States such that it might be used to overcome various deficiencies and inconsistencies in the evidence of record meant to substantiate the applicant's claim of continuous residence in the United States from a date prior to January 1, 1982 through May 4, 1988.

Similarly, the letter from [REDACTED] which is not duly notarized and which indicates only that Mr. [REDACTED] met the applicant at a mosque in New York on an unspecified date in 1981 is not independent, objective evidence, and is not sufficient to overcome deficiencies in the evidence of record and establish the applicant's continuous residence in the United States from a date prior to January 1, 1982 and throughout the statutory period.

In addition, the notarized letter of [REDACTED] which indicates that Ms. [REDACTED] met the applicant at an unspecified mosque in New York on an unspecified date during the summer of 1981 is not independent, objective evidence, and is not sufficient to establish that the applicant entered the United States prior to January 1, 1982 and that she maintained continuance residence in the United States from that date until the end of the statutory period.

There is no other evidence in the record to support the applicant's claim that she both entered the United States prior to January 1, 1982 and that she maintained continuance residence in this country through May 4, 1988.

Thus, the applicant has failed to establish that she entered the United States prior to January 1, 1982 and that she maintained continuous unlawful presence in this country from that date through May 4, 1988. CIS must deny her application on this basis.

Further, the applicant indicated on the Form I-687 at Item #1 and Item #16 that she first entered the United States on a nonimmigrant visa during August 1981 and that that lawful status either expired prior to January 1, 1982 or she violated the terms of that status and her unlawful status became known to the Government prior to January 1, 1982. The director advised the applicant in the NOID and again in the denial notice that the record lacked evidence to support the claim that her lawful nonimmigrant status expired prior to January 1, 1982, or that she fell out of lawful status prior to January 1, 1982 and her unlawful status became known to the Government. However, the applicant failed to provide evidence to support this claim and has not provided such evidence on appeal. Thus, the applicant has failed to establish that she was in the United States in unlawful status prior to January 1, 1982. CIS must deny her application on this basis as well.

Language in the NOID and the denial notice might be interpreted as the director suggesting that the stamps in the applicant's passport which indicate that she entered the United States as a nonimmigrant on May 23, 1987 and January 1, 1988, in and of themselves, establish that the applicant was lawfully present in the United States during the statutory period. This point in the NOID and the denial notice is withdrawn. That is, at 8 C.F.R. § 245a.2(b)(9), CIS specifically acknowledged that an alien who reentered the United States as a nonimmigrant during the statutory period in order to return to an unrelinquished, unlawful residence might

nonetheless be deemed eligible so long as he or she was otherwise eligible for legalization. *See Reno v. Catholic Social Services, Inc.*, 509 U.S. 43, 51 (1993) (which explains further that this eligibility is qualified at 8 C.F.R. § 245a.2(b)(10) by obliging such an applicant to obtain a waiver of a statutory provision requiring exclusion of aliens who enter the United States by fraud or willful misrepresentation.) *See also* sections 1104(a) and 1104(c) of the LIFE Act (indicating that all legalization provisions of section 245A of the Act, except as modified by section 1104(c) of the LIFE Act, shall apply to aliens who seek to adjust status under section 1104 of the LIFE Act.)

Thus, were the applicant in this matter able to show that she first entered the United States prior to January 1, 1982, that she was here unlawfully prior to January 1, 1982, and that her intent on May 23, 1987 and January 1, 1988 was to return to an unrelinquished, unlawful residence in the United States, CIS could find that she did not interrupt his continuous, unlawful residence in the United States, begun prior to January 1, 1982, when she exited and then reentered. In the instant case, however, the applicant has failed to establish that she entered the United States prior to January 1, 1982 and that she was in this country in unlawful status prior to January 1, 1982. She has even failed to establish by a preponderance of the evidence that her May 23, 1987 entry was not her first entry into the United States. As such, in this case, the evidence of record does not support the suggestion made by the applicant on appeal that on May 23, 1987 she was returning to an unrelinquished, unlawful residence in the United States. Nonetheless, this office notes that it is all these factors *combined* with the evidence that the applicant entered as a nonimmigrant on May 23, 1987 which lead to the conclusion that the applicant has not demonstrated that she was in the United States *unlawfully* subsequent to her May 23, 1987 entry. The May 23, 1987 and January 1, 1988 entries as a nonimmigrant during the statutory period are not in and of themselves sufficient to make a finding that the applicant was in the country lawfully during the statutory period.

The applicant has failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988. Thus, the applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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