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U.S. Citizenship  
and Immigration  
Services

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**PUBLIC COPY**

[Redacted]

FILE: [Redacted] Office: NEW YORK, NEW YORK Date: **APR 24 2008**  
MSC 01 303 60967

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. If your appeal was dismissed or rejected, all documents have been forwarded to the Citizenship and Immigration Services National Records 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and you will be contacted.

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 (director), Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The matter will be returned to the director to complete the adjudication of the application for permanent residence.

The director denied the application because she determined that 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 asserted that the applicant did establish continuous, unlawful residence in the United States during the statutory period.

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).

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.* 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 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).

The application and other statements of the applicant, both oral and written, are evidence to be considered. See *Matter of E-M-*, 20 I&N Dec. 77 at 79. The applicant’s statements must not be the applicant’s only evidence used to establish eligibility, but they should be viewed as valid evidence. *Id.*

The absence of contemporaneous evidence is not necessarily fatal to the applicant's claim of continuous residence in the United States during the statutory period. *See Id.* at 82-83. Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence during the statutory period. *See Id.*

Documentary evidence may be in the format prescribed by Citizenship and Immigration Services (CIS) regulations. *See Matter of E-M-*, 20 I&N Dec. 77 at 80. For example, 8 C.F.R. § 245a.2(d)(3)(i) states that a letter from an employer should be signed by the employer under penalty of perjury and "state the employer's willingness to come forward and give testimony if requested." *Id.* Letters from employers that do not comply with such requirements do not have to be accorded as much weight as letters that do comply. *Id.* However, even if not in compliance with this regulation, a letter from an employer should be considered as a "relevant document" under 8 C.F.R. § 245a.2(d)(3)(iv)(L). *Id.* Also, affidavits that have been properly attested to may be given more weight than a letter or statement. *Id.* Nonetheless in determining the weight of a statement, it should be examined first to determine upon what basis it was made and whether the statement is internally consistent, plausible and credible. *Id.* What is most important is whether the statement is consistent with the other evidence in the record. *Id.*

Here, the submitted evidence is relevant, probative and credible.

On or about February 14, 1991, the applicant applied for class membership in a legalization class-action lawsuit and submitted the Form I-687, Application for Status as a Temporary Resident. On July 30, 2001, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status.

The record includes the following documents related to the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988:

1. Pay stubs of checks issued to the applicant by Cohn Brothers Furniture Corporation, Brooklyn, New York dated July 24, 1987, August 14, 1987 and August 28, 1987.
2. A Form W-2, Wage and Tax Statement, for 1988 issued to the applicant by Moore Enterprises, Inc., 2314 Strauss Street, Brooklyn, New York.
3. A copy of an envelope addressed to the applicant at [REDACTED], Dallas, Texas, postmarked March 10, 1982; and a copy of an envelope addressed to the applicant at [REDACTED], New Brunswick, New Jersey, postmarked July 14, 1986.
4. The affidavit of Mr. [REDACTED] of [REDACTED] Dallas, Texas dated February 13, 1990 in which the affiant attested that the applicant resided with him from 1981 through 1985. The affidavit is amenable to verification in that it includes the affiant's address.
5. The affidavit of [REDACTED] dated March 3, 1990 in which the affiant attested that she met the applicant during 1985 when he resided at [REDACTED], New Brunswick, N.J., and that she has visited him frequently, beginning in 1985 and through the date this affidavit was signed. The affidavit is amenable to verification in that it includes the affiant's telephone number and address.

6. The affidavit of [REDACTED] dated January 25, 1991 in which the affiant attested that the applicant has resided in the United States since August 25, 1981, and that he has lived in the affiant's home at [REDACTED], Brooklyn, New York since July 1987. The affidavit appears to be amenable to verification in that the affiant included his address.
7. The applicant's affidavit dated February 13, 1991 on which the applicant attested that he has resided in the United States since August 25, 1981. He also attested that from 1981 through 1985 he lived in Dallas, Texas and supported himself by doing odd jobs, such as cleaning and paper distribution. From 1985 through 1987, he lived in New Jersey and he supported himself by doing cleaning and serving as an errand boy. In 1987, he moved to New York where he worked for Cohn Brothers Furniture Company as a warehouse helper from July 1987 through August 1988. In August 1988, he began working for Moore Enterprises, Inc. as a cleaner and then as a clerical assistant.
8. A form dated June 10, 1990 which indicates that the Reverend [REDACTED] of Christ Apostolic Church, U.S.A., New York, New York has affirmed that the applicant attended his church on a regular basis from an unspecified date in 1987 through the date that form was notarized. The statement is on a preprinted form with blanks on which the applicant's name is filled in, on which the applicant's address in 1987 is filled in and on which the year 1987 is filled in. The Reverend [REDACTED]'s name as the affiant is part of the preprinted portion of the form. However, the signature line indicates that the Reverend [REDACTED], the Pastor In-Charge, did not, in fact, complete this form. Rather, on January 30, 1991, the Reverend [REDACTED], the Assistant Pastor In-Charge, signed this form and apparently filled in the blanks on the form. The AAO notes that an Internet search indicates that since approximately 1976 the Reverend [REDACTED] has been the senior pastor of Christ Apostolic Church in New York City. See [http://www.cacfirst.usa.org/Lesson\\_09\\_Frames/CacIndex.htm](http://www.cacfirst.usa.org/Lesson_09_Frames/CacIndex.htm) (accessed March 20, 2008). The statement appears to be amenable to verification as it includes a mailing address for the church.<sup>1</sup>
9. The Form I-687, Application for Status as a Temporary Resident, which the applicant signed under penalty of perjury on May 30, 1990 which states that the applicant entered the United States on August 25, 1981. The form also states that he exited the United States once between August 25, 1981 and the date that this form was signed. He exited the United States for Canada on September 14, 1987 to visit a family member. He returned to the United States on September 30, 1987. This form also lists these addresses for the applicant: August 1981 through February 1985: [REDACTED] Dallas, Texas; February 1985 through July [REDACTED]

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<sup>1</sup> The AAO would emphasize that the portion of the letter that includes the name of the pastor in charge is preprinted on this form, and that the form is amenable to verification. As such, the fact that the assistant pastor in charge signed the document does not *per se* cast doubt on the authenticity of the document. This office does find, however, that this document is not probative evidence of the applicant's claim of continuous residence in the United States during the statutory period because of the discrepancy between the preprinted name of the affiant and the name of the individual who actually signed the document.

1987: [REDACTED] New Brunswick, N.J.; July 1987 through the date this form was signed: [REDACTED] (Basement), Brooklyn, New York. Regarding the applicant's past employment, the form states that beginning in February 1982 through July 1987 the applicant supported himself by doing odd jobs; from July 1987 through August 1987<sup>2</sup> the applicant supported himself by working as a helper at Cohn Brothers Furniture & Company, 4701 5<sup>th</sup> Avenue, Brooklyn, New York; and from August 1988 through the date that this form was signed the applicant was employed by Moore Enterprises, Inc., 2314 Strauss Street.

10. The Form for Determination of Class Membership in *CSS v. Meese* signed by the applicant and dated May 30, 1990 which states that the applicant has continuously resided in the United States since August 25, 1981, and that the only period during which he was outside the United States between August 25, 1981 and when he signed this form was during September 14, 1987 through September 30, 1987 when he visited Canada.
11. The affidavit of [REDACTED] dated March 7, 1991 in which the affiant attested that the applicant resided at her home in Ontario, Canada from September 14, 1987 through September 30, 1987. The affidavit is amenable to verification in that it includes the affiant's address.
12. The affidavit of [REDACTED] of Brooklyn, New York dated February 12, 1991 in which the affiant attested that he drove the automobile in which he and the applicant traveled to Ontario, Canada on September 14, 1987 and returned to New York on September 30, 1987. Mr. [REDACTED] also attested that the applicant traveled to Canada to visit a cousin. The affidavit is amenable to verification in that it includes the affiant's address.
13. The affidavit of [REDACTED] a registered nurse of Staten Island, New York dated April 13, 2006 on which the affiant attested that he has personal knowledge that from August 1981 through February 1985 the applicant resided at [REDACTED] Dallas, Texas; from February 1985 through July 1987 the applicant resided at [REDACTED], New Brunswick, N.J.; from July 1987 through an unspecified date in 1991 the applicant resided at [REDACTED], Brooklyn, N.Y. The affiant also attested that he is a friend of the applicant's family and the applicant contacted him upon his entry into the United States. The affidavit is amenable to verification in that it includes the affiant's address and telephone number.
14. The affidavit of [REDACTED] an accounting clerk of Queens Village, New York dated April 13, 2006 on which the affiant attested that she has personal knowledge that from August 1981 through February 1985 the applicant resided at [REDACTED] Dallas, Texas; from February 1985 through July 1987 the applicant resided at [REDACTED], New

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<sup>2</sup> Other evidence in the record indicates that the applicant worked at Cohn Brothers Furniture from July 1987 through August 1988. On the Form I-687 the applicant follows this position at Cohn Brothers Furniture with a position that begins in August 1988. Thus, it appears that the applicant made an error on the Form I-687 and intended to write that he had worked at Cohn Brothers Furniture until August 1988, not August 1987.

Brunswick, N.J.; from July 1987 through an unspecified date in 1991 the applicant resided at [REDACTED], Brooklyn, N.Y. The affiant also attested that she met the applicant at a wedding in Houston, Texas in 1981 and that she has been a friend of the applicant since that date. The affidavit is amenable to verification in that it includes the affiant's address and telephone number.

15. The affidavit of [REDACTED] a consultant of Staten Island, New York dated April 17, 2006 on which the affiant attested that he has personal knowledge that from August 1981 through February 1985 the applicant resided at [REDACTED] Dallas, Texas; from February 1985 through July 1987 the applicant resided at [REDACTED], New Brunswick, N.J.; from July 1987 through an unspecified date in 1991 the applicant resided at [REDACTED], Brooklyn, N.Y. The affiant also attested that he has been a friend of the applicant's family since prior to his entry into the United States and that they have remained friends through the date that this affidavit was written. The affidavit is amenable to verification in that it includes the affiant's address.

16. The affidavit of Senior Evangelist [REDACTED] a pastor of Brooklyn, New York dated April 21, 2006 on which the affiant attested that he has personal knowledge that from August 1981 through February 1985 the applicant resided at [REDACTED], Dallas, Texas; from February 1985 through July 1987 the applicant resided at [REDACTED], New Brunswick, N.J.; from July 1987 through an unspecified date in 1991 the applicant resided at [REDACTED] Brooklyn, N.Y. The affiant also indicated that he met the applicant when he attended church services led by the affiant in Texas. The affidavit is amenable to verification in that it includes the affiant's address.

There are no other documents in the record relevant to the applicant's claim that he resided continuously in the United States during the statutory period. The record does include documentation that on July 12, 2004 the applicant passed the U.S. history/civics test as well as the reading and writing in English tests as required by the LIFE Act.

On April 2, 2006, the district director issued a Notice of Intent to Deny (NOID). She concluded that the applicant had failed to submit sufficient, credible evidence of continuous, unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988. Specifically, the director stated that at the applicant's June 5, 2002 interview he testified that he entered the United States in 1982 and that in 1986 he exited the United States to visit Canada. Yet, at his July 12, 2004 interview, the applicant testified that he entered the United States in 1981 and that he exited the United States to visit Canada in 1987. Thus, the director concluded that the applicant had not provided credible evidence of continuous residence in the United States during the statutory period.

In response, the applicant submitted an affidavit dated April 21, 2006 in which he attested that he appeared for the June 5, 2002 scheduled LIFE legalization interview but that at that time, the immigration officer requested that the interview be rescheduled. The applicant attested that he was not interviewed on that date. He also submitted a copy of an earlier NOID in this matter, issued on May 10, 2004, in which the director stated that the applicant had not appeared for his June 5, 2002 interview and that his interview had been

rescheduled but that if he failed to appear at that rescheduled interview, his application would be denied. The applicant also submitted with this rebuttal to the April 2, 2006 NOID additional evidence of having resided in the United States during the statutory period.

On April 30, 2006, the director denied the application for the reasons set out in the April 2, 2006 NOID.

On appeal, counsel asserted that there was an error in CIS records and that the applicant had not been interviewed on June 5, 2002. Counsel also resubmitted evidence which had accompanied the rebuttal to the April 2, 2006 NOID.

This office finds that the preponderance of the evidence indicates that the applicant was not interviewed on June 5, 2002, as attested to by the applicant. This office will analyze this claim based on the applicant's testimony provided at the July 12, 2004 interview and the documentary evidence and written applications which the applicant has submitted into the record, as suggested by counsel on appeal.

As noted earlier, if the applicant submits evidence that leads CIS to conclude 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). Moreover, 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).

The applicant submitted over 10 affidavits, a Form for Determination of Class Membership, a Form I-687, original pay stubs issued to him during the statutory period and copies of two envelopes addressed to him in the United States and postmarked during the statutory period. He also testified on his behalf on July 12, 2004. The AAO finds that these various forms of evidence are both internally consistent and virtually completely consistent as compared to each other, as well as compared to the applicant's underlying claim that he resided continuously in the United States from August 25, 1981 through May 4, 1988.

Thus, the AAO finds that the applicant has established continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988.

The applicant has been arrested and called into court on two occasions, and on both occasions the charges filed against him were dismissed and the cases against him were placed under seal.

Specifically, the applicant provided court documents which establish that on December 29, 1992, he was arrested in New York City and charges were filed against him under the following sections of the New York Penal Law: NY Penal § 160.10 Robbery in the second degree; NY Penal § 120.05 Assault in the second degree; NY Penal § 165.45 Criminal Possession of Stolen Property in the fourth degree; and NY Penal § 165.40 Criminal Possession of Stolen Property in the fifth degree. The court documents relating to this arrest also indicate that the charges against the applicant were dismissed prior to any plea being entered and prior to any trial pursuant to New York Criminal Procedure Law § 170.55, and that the case was placed under seal pursuant to NY Cri Pro § 160.50 which is an order relating to criminal actions that are terminated in favor of the accused.

The applicant also provided court documents which establish that on October 25, 1996, he was arrested in New York City and charges were filed against him under the following sections of the New York Penal Law:

NY Penal § 120.00 Assault in the third degree; NY Penal § 155.25 Petit Larceny; NY Penal § 165.40 Criminal Possession of Stolen Property in the fifth degree; NY Penal § 240.26 Harassment in the second degree; and NY Penal § 120.15 Menacing in the third degree. The court document relating to this arrest also indicates that the charges against the applicant were dismissed prior to any plea being entered and prior to any trial pursuant to New York Criminal Procedure Law § 170.55, and that case was placed under seal pursuant to NY Cri Pro § 160.50, an order relating to criminal actions that are terminated in favor of the accused.

The AAO would note that dismissed charges do not affect an applicant's eligibility for the benefit sought in this matter.

**ORDER:** The appeal is sustained. The director shall continue the adjudication of the application for permanent resident status.