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

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FILE: [REDACTED]  
MSC 01 303 61201

Office: NEW YORK

Date: APR 29 2006

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 returned to the National Benefits 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 remanded for further action, 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, New York, New York, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The 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.

On appeal, counsel asserts that the applicant's evidence and oral testimony are sufficient to warrant a favorable exercise of discretion by the district officer, and that the decision of the director was arbitrary and not supported by the facts and circumstances of the case. The applicant submits no additional documentation in support of the appeal.

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. Section 1104(c)(2)(B) of the LIFE Act; 8 C.F.R. § 245a.11(b). "Continuous unlawful residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

*Continuous residence.* An alien shall be regarded as having resided continuously in the United States if:

- (1) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Although Citizenship and Immigration Services (CIS) regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

On a form to determine class membership, which he signed under penalty of perjury on March 5, 1991, the applicant stated that he first entered the United States on September 15, 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 on May 5, 1991, the applicant stated that he made one visit outside of the United States during the qualifying period when he traveled to Canada to visit a friend from December 20, 1987, to January 1, 1988. The applicant also stated that he lived at [REDACTED] in New York from September 1981 to July 1986, and at [REDACTED] in New York from July 1986 until the date of his Form I-687 application. The applicant also stated that he worked as a self-employed taxi driver from September 1981 to the date of his Form I-687 application.

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

1. A June 30, 1991, notarized statement from [REDACTED], in which he stated that the applicant lived with him at [REDACTED] in New York from September 1981 to July 1986.
2. A July 8, 1991, affidavit from [REDACTED], in which he stated that the applicant used to sell in front of the restaurant that the affiant managed. The affiant stated that he first encountered the applicant in September 1981, and that the applicant lived at [REDACTED] in New York from September 1981 to July 1986, and at [REDACTED] in New York from July until the date of the affidavit. The affiant provided no additional information about his initial acquaintance with the applicant and how he dated their relationship. The affiant stated that the applicant sold outside of his restaurant, but did not specify the product that the applicant sold. Further, the applicant stated that he was a self-employed taxi driver throughout the qualifying period. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). We note that the applicant stated on his Form G-325, Biographic Information, which he signed under penalty of perjury on July 25, 2001, that he had been a self-employed merchant since October 1990.
3. A July 23, 2001, affidavit from [REDACTED] who stated that he met the applicant at a party in the Bronx in 1981, and to his personal knowledge, the applicant had lived in the United States since December 1981.
4. A February 20, 1990, notarized letter from the Islamic Council of America, signed by [REDACTED] who identified himself as vice president. The letter certified that the applicant was a "permanent member of our community since December of 1981," and that he came to Friday prayers on a regular basis. The letter does not indicate the source of the information contained in the letter and does not indicate the applicant's address at the time of his membership in the council, as required by 8 C.F.R. § 245a.2(d)(3)(v).
5. A January 30, 1992, sworn statement from [REDACTED], in which he stated that he drove the applicant to Canada on December 20, 1987, and that they returned on January 1, 1988.

6. A June 30, 1991, sworn letter from [REDACTED], in which he certified that the applicant traveled from New York to visit him in Canada from December 20, 1987, to January 1, 1988.
7. A copy of an identification card issued to the applicant by the Senegalese consulate in Washington, D.C., dated February 23, 1988.
8. A partial copy of the applicant's visa, showing that he received a B-1/B-2 nonimmigrant visitor's visa at the American Consulate in Banjul on January 20, 1988. The visa was valid for multiple entries through April 19, 1988.

On May 19, 2006, the director issued a Notice of Intent to Deny in which she notified the applicant that CIS records revealed that he had made several trips outside of the United States during the qualifying period. Immigration records reveal the following entries and departures pursuant to a B-1 visa for the applicant during the qualifying period: May 18 to June 1, 1985; October 19 to October 26, 1985; May 7 to May 18, 1987; and July 6 to July 20, 1987. The director noted that the applicant failed to reveal these absences on his Form I-687 application and failed to inform the interviewing officer of them during his interview, which raised questions about the applicant's credibility. The director further noted that the length of time between the entrances exceeded 45 days for a single absence and 180 days in the aggregate. The applicant was granted 30 days in which to submit additional evidence for consideration in his case.

In response, the applicant submitted rental receipts from the [REDACTED] at [REDACTED] in New York, for the periods August 22 to August 29, 1987; August 29 to September 5, 1987; December 19 to December 26, 1987; and January 9 to January 16, 1988. The director determined that the applicant had not submitted sufficient evidence to establish continuous residence and continuous presence in the United States for the qualifying periods and denied the application on July 3, 2006. The applicant submits no additional documentation on appeal.

The applicant alleged on his Form I-687 application that his only departure from the United States during the qualifying period was from December 1987 to January 1988 when he visited a friend in Canada for the Christmas holidays. During his interview on June 30, 2006, the applicant alleged that he had made many trips outside the United States but could not recall the dates. He also alleged during his interview that he had been a vendor/street peddler from 1982 to 1988; however, on his Form I-687 application he alleged that he was a self-employed taxi driver for the same period. The applicant failed to submit any objective evidence to explain or justify the inconsistencies in his statements. Therefore, the reliability of the remaining evidence offered by the applicant is suspect. *Matter of Ho*, at 591-92.

The director noted in her decision that the record reflected that the applicant was absent from the United States from October 26, 1985, to September 20, 1987, which interrupted his claim of continuous residence in the United States. The applicant does not contest the director's determination that his absences from the United States exceeded the 45-day and 180 day limit outlined in the regulation at 8 C.F.R. § 245a.15(c)(1).

Given his extended absences from the United States, his failure to fully disclose all of his entries and departures from the United States, the contradictory information about his employment, and the absence of any contemporaneous documentation, it is concluded that the applicant has failed to establish continuous residence in the United States for the required period. Accordingly, the appeal is dismissed.

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