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

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[REDACTED]

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FILE: [REDACTED]  
MSC 02 095 60741

Office: FAIRFAX

Date: **MAR 31 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. 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 Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Fairfax, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director concluded that the applicant had not established that he 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, and therefore, denied the application. While the record shows that the adverse decision was warranted, the AAO notes that the director's underlying analysis was flawed. Specifically, the director characterized the applicant's entry into the United States with an H-1B visa in 1987 as a lawful entry despite the fact that the applicant has always claimed he was returning to an unrelinquished and unlawful residence that had been initially established in 1981. Consequently, the applicant's entry into the United States on July 21, 1987 cannot be considered lawful and his residence for the requisite period must be examined in light of his claim that he was returning to his previous unlawful and unrelinquished residence in this country.

On appeal, counsel asserts that the applicant fraudulently obtained his H-1 visa in order to reenter and resume his previously established unlawful residence. Counsel submits a brief in support of her arguments.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. 8 C.F.R. § 245a.11(b).

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

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

Even if the director has some doubt as to the truth, if the 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 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).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States during the requisite time period. Here, the applicant has not met this burden. In support of his claimed unlawful residence during the requisite time period, the applicant provided the following documentation:

1. A copy of the Form I-687 completed and signed by the applicant on April 11, 1991. In No. 33 of the application, the applicant stated that he had resided at [REDACTED] Alexandria, Virginia from April 1981 through the date the application was completed.
2. Two employment verification letters from the employers identified in the applicant's Form I-687. The AAO notes that only one of these employers, i.e., DNA Janitorial Services, Inc., claimed that the applicant's employment took place during the requisite statutory period. Specifically, the letter with regard to this relevant employment is dated March 15, 1991 and was signed by the office manager who indicated that the applicant was employed by this company from November 16, 1981 to April 1983 and claimed that the applicant was compensated \$8,900 annually. However, this letter will be afforded minimal evidentiary weight as it is not in compliance with 8 C.F.R. § 245a.2(d)(3)(i), which requires that the employer include the applicant's address at the time of employment, state whether the information was taken from official company records and, if so, where such records are located and whether CIS may have access to them.
3. An affidavit dated June 11, 1991 from [REDACTED] who stated that the applicant is his/her cousin. The affiant stated that the applicant resided at [REDACTED]. Although the street address in this document was altered to read [REDACTED] which is consistent with the information provided by the applicant in No. 33 of the Form I-687, it does not appear that this change was made by the affiant. As such, it is unclear whether the affiant had actual knowledge of the applicant's residential address or his presence in the United States as claimed in the affidavit. Further, the affiant provided no specifics about the events and circumstances of the applicant's life in the United States during the requisite period. Based on these significant deficiencies, this affiant's testimony can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.

The AAO also notes that the applicant submitted an employment verification letter dated December 12, 1990 regarding his employment with Emagyas Enterprise. While this letter does not address the issue of the applicant's residence during the statutory period, its content is relevant to the issue of the applicant's overall credibility. Specifically, the letter was signed by a supervisor who claimed that the applicant was employed by the company as of January 12, 1990 at a rate of \$4.75 per hour and continued to be employed by this company at the time the letter was signed. However, the applicant provided Form G-325 as well as an employment letter from "Duron Paints & Wallcoverings," dated March 4, 2003, both stating that the applicant was employed by Duron as of August 7, 1990. The applicant did not include his employment for Duron, Inc. in his Form I-687. Nor did he explain how he was simultaneously employed by Emagyas Enterprise and Duron, Inc. 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).

Additionally, in support of the appeal, the applicant provided an affidavit dated April 11, 2003 from [REDACTED] who claimed that the applicant is her nephew who lived with her at [REDACTED] from 1981 to

1987. The AAO notes that this affiant's testimony is in direct conflict with information provided by the applicant and the affiant whose testimony was discussed in No. 3 above, as both claimed that the applicant's residence was at [REDACTED]. As a result of this considerable inconsistency, the testimony of [REDACTED] can be afforded minimal weight as evidence of the applicant's residence in the United States during the statutory period. Moreover, doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I&N Dec. at 591. Thus, the applicant's submission of inconsistent testimony further detracts from his own credibility and the validity of his claim.

While counsel's arguments on appeal are acknowledged, they fail to reconcile the considerable discrepancies in the applicant's testimony and the testimony of affiants whose statements were submitted to support the applicant's claim. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). While counsel properly disputes the adverse findings that were based on the applicant's visa entry in 1987, her statements are insufficient to repair the applicant's credibility that has been impugned by his submission of inconsistent supporting documentation.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted inconsistent and otherwise deficient attestations from only two people concerning that period. Because of these unresolved inconsistencies, the applicant has failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. Given this, he 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.