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FILE: [REDACTED]  
MSC 02 115 60271

Office: NEW YORK

Date: **MAY 23 2008**

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. The file has been returned to the National Benefits Center. 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 District Director, New York, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to establish his eligibility for adjustment of status under the LIFE Act, by submitting primary evidence to demonstrate that he had been residing in the United States during the period between January 1, 1982, and May 4, 1988.

On appeal, the applicant asserts that he responded to the director's Notice of Intent to Deny (NOID) and submits two additional documents.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 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). 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.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The record reflects that on January 23, 2002, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On February 2, 2004, the applicant appeared for an interview based on his application.

On February 3, 2004, the director issued a Notice of Intent to Deny (NOID), finding that the applicant failed to establish his eligibility by submitting primary evidence to demonstrate that he had been residing in the United States during the period between January 1, 1982, and May 4, 1988. The director noted that attempts to contact individuals who had submitted letters on the applicant's behalf had been unsuccessful. The director also noted that the receipts the applicant submitted had no name or address on them. The director informed the applicant that he had 30 days from the receipt of the NOID to submit evidence to overcome the director's intent to deny his application. In response, the applicant submitted a letter from his mosque, verifying the death of the individual who wrote him a letter in 1986, and a letter from Gaznafar Ali Chowdhury, attesting to the applicant's residence from February 1981, to December 1989.

On March 24, 2006, the director denied the application, finding that the applicant failed to overcome the grounds for denial as stated in the NOID. The director stated that the applicant had failed to submit additional evidence in support of his application during the time allotted.

On appeal, the applicant asserts that he did respond to the director's Notice of Intent to Deny (NOID) and submits two additional documents.

The issue in this proceeding is whether the applicant has provided sufficient credible evidence to demonstrate that he was continuously physically present in the United States during the requisite period. The director erred in stating that the applicant must establish that he had been residing in the United States during the period between January 1, 1982, and May 4, 1988 by submitting primary evidence. A LIFE applicant must establish continuous unlawful residence from before January 1, 1982, through May 4, 1988, and continuous physical presence from November 6, 1986, through May 4, 1988. 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). Nonetheless, this is harmless error.

In addition to the documents submitted in response to the NOID, the record of proceeding contains several receipts and affidavits previously submitted with his Form I-687, Application for Status as a Temporary Resident. The following evidence relates to the requisite period:

#### Employment Letters

- A letter from [REDACTED] president of the [REDACTED], attesting that the applicant worked as a dishwasher from February 1981 to December 1982 and was paid \$3 an hour; from January 1983 to May 1987 as a bus boy and was paid \$4 an hour; and from August 1987 to December 1989 as a waiter, making \$4.50 an hour plus 15% of the tips. He attests that the applicant was paid in cash because he did not have a social security number.

This letter can be given little evidentiary weight because it lacks sufficient detail and information required by the regulations. Specifically, the employer failed to provide the applicant's address at the time of his employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the employer also failed to declare which records his information was taken from, to identify the location of such records, and to state whether such records are accessible, or, in the alternative state the reason why such records are unavailable. In addition, the letter listed his positions but did not list the applicant's duties.

#### Letters and Affidavits

- An undated letter notarized on December 10, 2001, from [REDACTED] the applicant's former roommate, attesting that the applicant resided with him at [REDACTED] in Brooklyn, New York, from February 1981 to December 1989. Mr. [REDACTED] attested that the lease was in his name. He attested that from February 1981 to November 1985, the applicant paid him \$120 per month as his share of the rent and from December 1985 to December 1989, he paid \$150 per month;

An unnotarized, undated, fill-in-the-blank affidavit from [REDACTED] m. Mr. [REDACTED] stated that the met the applicant shopping in a grocery store and thereafter saw each other periodically at each other's houses. Mr. A [REDACTED] stated that he kept in touch with the applicant and saw him an average of two times per month;

- An unnotarized, undated, fill-in-the-blank affidavit from [REDACTED]. Mr. [REDACTED] stated that he had known the applicant since July 1981 while he was living at [REDACTED]'s house. He stated that he saw the applicant most months of the

year, that they went on a family picnic together, and attended many parties together and went dining and shopping in the city together.

These letters can be given little evidentiary weight because they lack sufficient detail. Although the applicant has submitted numerous letters and affidavits in support of his application, he has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. None of the affiants indicated how they dated their acquaintance with the applicant, how they met the applicant, or, how frequently they saw the applicant.

The record of proceedings contains various other documents, including two residential leases signed on September 24, 2001 and September 19, 1999; utility bills dated in 1995; a letter from [REDACTED] attesting that the applicant worked as a waiter at the Bengal Café in New York City from September 1, 1990, to March 1997; and, a letter from [REDACTED] the applicant's former roommate, attesting that the applicant lived with him from September 1990 to February October 1994 at [REDACTED], in Long Island City, New York. None of this evidence addresses the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have last entered the United States on July 2, 1987, and to have resided for the duration of the requisite period in New York. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence 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.