U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: NEW YORK Date: FEB 09 2007

MSC 02 032 61146

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. Any further inquiry must be made to that office.

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 (AAO) 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 director's decision is arbitrary and an abuse of discretion, and "is not supported by the peculiar facts and circumstances of the case." Counsel indicated on the Form I-290B, Notice of Appeal to the Administrative Appeals Unit, that a brief and/or additional evidence would be submitted within 30 days of filing the appeal. In a response to a fax inquiry by the AAO on January 3, 2007, counsel stated that he did not file a brief or submit additional evidence in support of this appeal. Therefore, the record will be considered complete as presently constituted.

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).

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).

On a form to determine class membership, the applicant stated that he first entered the United States in May 1981.

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

1. An undated "affidavit" from [redacted] in which he stated that he resided at [redacted] in Brooklyn and that the applicant lived with him at that address from July 1981 to August 1984. In response to the NOID, the applicant submitted an envelope addressed to him at this address that shows a July 2, 1982 postmark.

2. An undated letter from [redacted] in Brooklyn, New York, and signed by [redacted] as manager. [redacted] stated that the applicant had worked for the company from August 1981 to July 1984 as a "helper." The letter does not indicate whether or not the information regarding the applicant's employment was taken from company records or the applicant's address at the time of his employment. 8 C.F.R. § 245a.2(d)(3)(i). The director noted in her Notice of Intent to Deny (NOID) dated July 9, 2004, that the area code (718) did not come into existence until September 1984. However, this observation is irrelevant as the letter is undated and there is no indication that the applicant claimed this phone number was in existence at the time he worked there.

3. An August 27, 2001 affidavit from [redacted] in which he stated that the applicant had lived in Brooklyn, New York since October 1982. This statement conflicts with other documentation in the record, which indicates that the applicant began living in Virginia in 1984. 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). [redacted] stated that he has lived with the applicant, but did not state when or where this living arrangement occurred.

4. An August 24, 2001 affidavit from [redacted] in which he stated that the applicant has lived in Brooklyn, New York from April 1983 to the present. However, this statement conflicts with other documentation in the record that indicates the applicant lived in Alexandria, Virginia from 1984 through the date of his Form I-687 application. [redacted] did not indicate the circumstances surrounding his initial acquaintance and continuing relationship with the applicant, although he stated that the applicant worked with him in construction. *Id.*

5. An August 27, 2001 affidavit from [redacted] in which he stated that the applicant has lived in Brooklyn, New York since April 1983. This statement contradicts other documentation in the record indicating that the applicant lived in Virginia from 1984 to at least 1992, the date of his Form I-687 application. Although he stated that he has known the applicant for a long time, [redacted] did not state the circumstances of his initial acquaintance with the applicant or that the acquaintance began in the United States.

6. An undated letter from D.C. Flyer Cab Association in Washington, D.C., signed by [redacted] as administrative officer. [redacted] confirmed that the applicant "has been serving our Association as a Clerk" from September 1984 to July 1987. [redacted] also did not indicate whether the information regarding the applicant's employment was taken from company records or the address he used while working for the association. 8 C.F.R. § 245a.2(d)(3)(i). The director notified the applicant in her NOID that neither the applicant nor [redacted] was known at this address, and that the address on the document does not relate to the D.C. Flyer Cab Association.

7. An undated "affidavit" from [redacted], in which he stated that he resided at [redacted] Columbia Pike in Alexandria, Virginia, and that the applicant resided at this residence from September 1984 to August 1987. [redacted] did not state that he shared the residence with the applicant nor did the applicant submit any corroborative documentation that he lived at this address during the stated time frame.

8. An undated letter from [redacted] in Alexandria, Virginia, signed by [redacted] as the administrative officer. [redacted] certified that the applicant worked for the company as an assistant manager from October 1987 "to date." As with the applicant's other employment verification letters, the letter from [redacted] does not indicate the source of the information regarding the applicant's employment and does not provide his address at the time of his employment. *Id.*

9. An undated "sublease agreement" signed by [redacted], in which he stated that he lived with the applicant at [redacted] in Alexandria, Virginia from October 1987 to the "present." [redacted] stated that the applicant paid him $200 per month as rent. In response to the NOID, the applicant submitted a copy of an apartment lease, which purports to show that he and [redacted] were co-tenants at this address, paying a monthly rent of $400, and that the landlord was [redacted] who lists his address in Brooklyn, New York. The lease purports to be a five-year lease (highly unusual in and of itself) beginning on October 25, 1987 and ending on October 24, 1992. We note that the version of the agreement is dated November 1989. Although the document appears to be notarized, the copy of the lease agreement does not contain any signatures in the "tenant" signature block. Moreover, the document does not support [redacted] statement that the applicant paid him rent for the apartment. The applicant submitted no corroborating documentation such as rental receipts, utility receipts, or other documentary evidence to corroborate that he lived at this address during the stated time frame.

The NOID notified the applicant that information provided in his employment verification letters and other supporting letters could not be verified. *See* 8 C.F.R. § 245a.4(b)(4). The applicant submitted no further information or documentation to resolve the issues identified by the director or to update contact information of his various employers or others who attested to his presence and residency in the United States during the requisite period.

In her NOID, the director also informed the applicant that his responses to questions during his LIFE Act adjustment interview were evasive, contradictory and not credible. The applicant provided no explanations or documentary evidence to resolve these issues. Counsel asserts on appeal that the director's decision was not supported by the "peculiar facts and circumstances of this case." However, counsel failed to explain or identify the peculiar nature of the case that warrants special consideration.

Given the minimum contemporaneous documentation and the unresolved contradictions in the record, it is concluded that the applicant has failed to establish continuous residence in the U.S. for the required period.

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