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

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FILE: [REDACTED]
MSC 03 249 64436

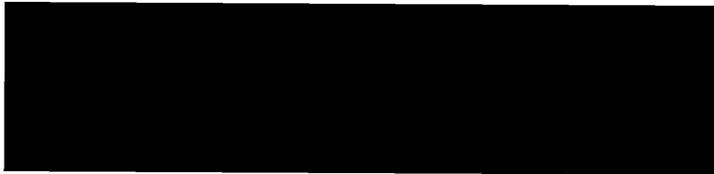
Office: LOS ANGELES

Date: **AUG 01 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:



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, Los Angeles, California, 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, finding that the evidence of record did not show that the applicant entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status since that date through May 4, 1988. The director noted that the applicant submitted receipts on Rediform forms dated in 1981 through 1983 which were not in publication until 1984. The director also noted that the applicant's only other evidence was affidavits from his known acquaintances. The director noted that the applicant's file contained his original passport which showed an entry on September 16, 1989, at New York. The director stated that the applicant did not submit viable evidence which proved his physical presence in the United States prior to January 1, 1982. The director concluded that all viable evidence submitted by the applicant proved that he was present in the United States from 1989 forward.

On appeal, counsel for the applicant asserts that the applicant arrived in the United States in 1981 and that he explained at his interview that he then reentered in 1989. Counsel asserts that the applicant submitted receipts and affidavits from acquaintances to support his application. Counsel asserts that it is irrelevant when the Rediform receipts were published because the services for which the receipts were generated actually occurred. The applicant submits three additional affidavits.

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 record reflects that on April 27, 1990, the applicant filed a Form I-687, Application for Status as a Temporary Resident. The applicant indicated on his Form I-687 that he first entered the United States without inspection, through the U.S.-Mexico border, in May 1981. He indicated that he left and returned to the United States twice after that: from June 1987 to July 1987 as a visitor to Mexico, and from August 1989 to September 1989, due to a family emergency to Syria.

On June 1, 1991, the applicant filed a Form I-589, Request for Asylum in the United States. The applicant indicated on his I-589 that he first entered the United States on September 16, 1989, with his passport that contained a nonimmigrant B-2 visitor’s visa issued to him. The applicant indicated on his Form G-325A, Biographic Information, that he lived in Damascus, Syria, from birth to September 1989.

On June 6, 2003, the applicant submitted the current Form I-485, Application to Register Permanent Residence or Adjust Status. On March 28, 2006, the applicant appeared for an interview based on this application.

On November 29, 2006, the director sent the applicant a Notice of Intent to Deny (NOID) the application. The director concluded that the documents the applicant submitted failed to establish, by a preponderance of the evidence, that he entered the United States before January 1, 1982. The director noted that the applicant’s original passport showed an entry date of September 16, 1989, at New York and that the applicant filed an asylum claim that he later withdrew. The director also noted that the letter from the Syrian Orthodox Church was for good moral character. The director also found that the applicant failed to provide documentation from a governmental or non-governmental authority establishing his physical presence from during the requisite period. The director found that the applicant had not provided sufficient

documentation to establish that he arrived in the United States in 1981. The director informed the applicant that he had 30 days from the receipt of the NOID to submit any information the applicant felt was relevant to his case.

In response to the NOID, counsel for the applicant submitted a rebuttal letter, asserting that the applicant arrived in the United States in 1981 and that he explained at his interview that he then reentered in 1989. Counsel asserted that the applicant submitted receipts containing dates of 1981 to 1983. Counsel asserted that the applicant testified that he obtained those receipts in or about 1989 from the person who signed the receipts and that the receipts were obtained pursuant to the instructions of the immigration consultant that the applicant retained to prepare his original Legalization application. Counsel asserted that the applicant further testified that the information contained in the receipts is accurate, that in 1981, 1982, and 1983, the applicant rented living quarters from Afif Sati. Counsel asserted that even though the receipts were completed after the fact, they accurately reflect payments made in 1981, 1982, and 1983. Counsel asserted that collectively, the additional evidence submitted by the applicant establishes conclusively that he has been living in the United States since 1981.

On January 18, 2007, the director denied the application, finding that the evidence of record did not show that the applicant entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status since that date through May 4, 1988. The director noted that the applicant submitted receipts on Rediform forms dated in 1981 through 1983 which were not in publication until 1984. The director also noted that the applicant's only other evidence was affidavits from his known acquaintances. The director noted that the applicant's original passport showed an entry date of September 16, 1989, at New York and that the applicant filed an asylum claim that he later withdrew. The director stated that the applicant did not submit viable evidence which proved his physical presence in the United States prior to January 1, 1982. The director concluded that all viable evidence submitted by the applicant proved that he was present in the United States in 1989 and beyond. The director denied the application for the reasons stated in the NOID.

On appeal, counsel for the applicant asserts that the applicant arrived in the United States in 1981 and that he explained at his interview that he then reentered in 1989. Counsel asserts that the applicant submitted receipts and affidavits from acquaintances to support his application. Counsel asserts that it is irrelevant when the Rediform receipts were published because the services for which the receipts were generated actually occurred. The applicant submits three additional affidavits.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period.

The record of proceeding contains the following evidence relating to the requisite period:

Contemporaneous Evidence

- Three receipts 1981, 1982, 1983. These receipts can be given no weight as evidence of the applicant's residence. The applicant and the person who signed the affidavits, [REDACTED], have admitted that the receipts were not signed by [REDACTED] on the dates indicated on them - they were signed years later. Both [REDACTED] and the applicant maintain that the receipts are an accurate representation of the fact that the applicant gave [REDACTED] this amount of money on the days indicated for rent. (please see below); and,

A receipt dated July 18, 1982 for a car stereo and speakers. This receipt can be given no weight as evidence of the applicant's required residence or physical presence because it does not indicate the seller or the name and address of the buyer of the stereo and speakers;

Letters and Affidavits

- A handwritten note from [REDACTED] stating that he gave the above-mentioned receipts to the applicant because the applicant asked him to a few years after the fact when he needed it for his case. [REDACTED] states that it is true that the applicant was living with him. This letter can be given minimal weight since it is not sufficiently detailed to serve as evidence of the applicant's required continuous residence and physical presence. This note provides no details of [REDACTED] personal knowledge of the applicant's residence and physical presence in the United States;

A "Rental Affidavit" dated April 11, 1990. The address is consistent with the address provided on the Form I-687. Signed by [REDACTED] the affiant certifies that the applicant rented his apartment, located at [REDACTED] Angeles, California, 90038, from 1981 to May 1983;

- A "Declaration Statement" form sworn to on April 27, 1990, from [REDACTED] [REDACTED] completes several blanks on the form and indicates that the applicant left the country on June 1987 to visit Mexico and returned in about July 1987. He states that he knows this because he and the applicant "are relatives and he used to live with me." This letter can therefore be given little weight as evidence of the applicant's continuous residence during the requisite period;

An affidavit sworn to on July 13, 1990, from [REDACTED] states that he knows the applicant left for Mexico on June 25, 1987, because the applicant lived with him. He states that it was almost 6:00pm when the applicant left with some friends. He provides details about the applicant's trip. He states that the applicant returned on July 14, 1987, and arrived home in the late afternoon. This is the only

instance in the record where [REDACTED] or the applicant indicates they were living together in 1987. All the other information provided indicates that they lived together only from 1981 to 1983;

A declaration submitted on appeal from [REDACTED] repeating information provided in several previously submitted statements. [REDACTED] indicates that he met the applicant in 1981 when he first came to the United States. [REDACTED] states that he did everything he could to help the applicant adjust to life in this country. Mr. [REDACTED] states that, with his help, the applicant was able to rent an apartment on Waring Avenue in Los Angeles and that the applicant paid approximately \$200 in cash for the rental. He states that the applicant stayed in the apartment for some time.

[REDACTED] states that he remembers clearly that in the summer of 1987, the applicant told him that he was going shopping in Tijuana and brought [REDACTED] pair of leather shoes as a gift.

[REDACTED] states that in 1990, in order to help the applicant with his application for amnesty he provided the applicant with back-dated receipts for the rent he paid for the Waring Avenue apartment. He states that, since the applicant's arrival in 1981, he does not recall a time when he has not kept in contact with the applicant.

[REDACTED] states that the applicant left once for Syria. He states that he has seen the applicant on a regular basis and that if he were ever to leave, he would have told [REDACTED] so. He states that the applicant has lived in the United States for over 25 years.

Even if it were signed and notarized, the statement does not provide sufficient detail about the applicant's continuous residence and physical presence since before January 1, 1982, through May 4, 1988. [REDACTED] says he met the applicant in 1981, but does not provide a date and does not indicate how or where he met the applicant. Nor does he indicate how he specifically remembers that it was in the year 1981 that he met the applicant. He states that he has remained in contact with the applicant for the past 25 years, but does not indicate how, if by telephone, letters, or e-mail. He states that he has seen the applicant on a regular basis but does not indicate where they meet or the frequency of their meetings.

In addition, this statement appears to contradict [REDACTED]'s own earlier statements. In this latest statement, [REDACTED] does not mention that the apartment the applicant rented belonged to [REDACTED], or that the applicant contributed money towards the rent but that [REDACTED] name was on the lease, or that the two lived together in that apartment. [REDACTED] simply states that, with his help, the applicant was able to rent "an" apartment on Waring Avenue. In the April 27, 1990, "Declaration

Statement" [REDACTED] indicated that the applicant used to live with him. And in the April 27, 1990, "Rental Affidavit," [REDACTED] certified that the applicant rented "his" apartment from 1981 to 1983. [REDACTED] states in this latest affidavit that he met the applicant in 1981 but does not indicate anything further about their relationship. In the April 27, 1990, "Declaration Statement," [REDACTED] stated in three different places that he and the applicant were relatives. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The information in this statement calls into question several material facts asserted by the applicant. Did the two live together and for how long? Did the applicant live alone in and rent the apartment from [REDACTED] did he live in it with [REDACTED] and pay towards the rent and the household bills? Are the applicant and [REDACTED] just former roommates or are they relatives? The applicant has not attempted to explain or reconcile the inconsistencies between the various statements provided by the applicant;

- An "Affidavit of Witness" form, sworn to on April 27, 1990, and signed by [REDACTED]. The form indicates that the affiant has personal knowledge that the applicant has resided in the United States in California from November 1981 to present. The form allows the affiant to fill in a statement that he or she "is able to determine the date of the beginning of his or her acquaintance with the applicant in the United States from the following fact(s): ____." [REDACTED] added nothing and left that part of the form blank. This affidavit, prepared on a fill-in-the-blank form, contains no details regarding any relationship with the applicant during the requisite period. [REDACTED] fails to indicate any personal knowledge of the applicant's claimed entry to the United States or of the circumstances of his residence other than the city where he resided;
- A handwritten note sworn to on June 13, 1990, from an illegible person, stating that the applicant painted their four bedroom house for \$285 on February 11, 1982. The affiant does not indicate where the applicant lived at the time, if they knew the applicant was residing in the United States and for how long. This provides no evidence of the applicant's residence and only indicates that he was present on one day during the statutory period;
- A handwritten note sworn to on June 14, 1990, from [REDACTED] who states that the applicant painted her two bedrooms and den for \$230 on September 16, 1984, at [REDACTED]. Again, [REDACTED] does not appear to have and does not assert any knowledge of the applicant's required continuous residence or physical presence in the United States;

- A handwritten letter from [REDACTED] provides her current address and states that she has known the applicant since 1982. She asserts that they visit each other almost every month and that they call each other every Sunday. She states that the applicant is responsible, good, and trustworthy. She states that they visit each other every month but does not provide the applicant's current address or indicate that she knows the other places he has lived since 1982. She states that they call each other every Sunday, but does not provide the applicant's phone number or any details about the conversations they have;
- A letter from [REDACTED] states that she met the applicant in Los Angeles 20 years ago, but does not state exactly when she met the applicant, where she met the applicant, or under what circumstances she met him. She provides her current phone number and address, but does not provide the applicant's current address or indicate that she has any knowledge of where the applicant has lived for the past 20 years. This letter can be afforded no weight as evidence of the applicant's required continuous residence or physical presence as it is not notarized and not dated. Furthermore, this letter provides insufficient detail regarding the applicant's continuous residence during the requisite period; and,
- A handwritten note from [REDACTED] submitted in response to the NOID. Mr. [REDACTED] provides his current address and states that he has known the applicant since the end of 1981 until now. He states that they are in continuous contact and visit each other on holidays and birthdays. He states that the applicant is an honest, trustworthy, decent individual. He does not provide the applicant's current address or indicate that he has any knowledge of where the applicant has lived since 1981. This letter can be afforded no weight as evidence of the applicant's required continuous residence or physical presence as it is not dated and not notarized. Furthermore, this letter provides insufficient detail regarding the applicant's continuous residence during the requisite period; and,
- A declaration from [REDACTED] submitted on appeal. [REDACTED] states that he is the applicant's friend of 25 years. He states that

For the reasons noted above, these documents are insufficient to meet the applicant's burden of proof regarding his continuous residence and physical presence in the United States for the requisite period. In addition, although the applicant has submitted numerous affidavits in support of his application, he has not provided any contemporaneous evidence of residence in the United States during the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality.

The only other documentation in the record includes a receipt from the Salvation Army dated May 31, 1996, and tax records for 1990 to 1995. This evidence does not address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

Furthermore, several contradictions and inconsistencies exist between information provided by the applicant in support of his LIFE Act application and in support of his asylum application. On his LIFE Act application, the applicant asserts that he first entered the United States in 1981 and has resided continuously in the United States from that date to the present. He has indicated that during that time he departed the United States twice: once, for a family emergency in Syria from August 1989 to September 1989, and once, to visit Mexico from June 1987 to July 1987. to visit friends in Canada in 1987. According to the Form G-325A submitted in support of his asylum application, the applicant indicated that he was born in Syria in 1953 and lived there until 1989. 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 petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has not attempted to explain or reconcile these significant inconsistencies nor has he submitted competent objective evidence pointing to where the truth lies about his whereabouts during the LIFE Act statutory period.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have first entered the United States without inspection in October 1981, and to have resided for the duration of the requisite period in California. 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.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, or automobile, contract, and insurance documentation) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (I) and (K). The documentation provided by the applicant consists solely of affidavits. These third-party affidavits lack specific details as to how the affiants knew the applicant – how often and under what circumstances they had contact with the applicant – during the requisite time period from prior to 1982 through 1988.

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved

is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the insufficiency in the evidence, the AAO determines that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, resided in this country in an unlawful status continuously since that time through May 4, 1988, and maintained continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, 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.