U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: MILWAUKEE Date: AUG 18 2008

MSC 02 235 63171

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 your case 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 Acting District Director, Milwaukee, and 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 demonstrate that he entered the United States before January 1, 1982, and that he resided continuously in the United States in an unlawful status since that date through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel asserts that the director failed to consider all of the evidence submitted by the applicant, specifically sworn affidavits submitted in support of the applicant's claim. Counsel contends that the applicant lied on his Optional Form 156 (OF-156), Nonimmigrant Visa Application, regarding his employment in Nigeria in order to procure a U.S. visa in 1984. Counsel provided copies of previously submitted evidence for consideration.

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 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 through May 4, 1988. *See* § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant 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 section 1104 of the LIFE Act. 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.* at 80. 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.13(f).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet the burden of establishing, by a preponderance of the evidence, that the applicant's claim of continuous unlawful residence in the United States during the requisite period is probably true. Upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

The applicant has provided the following evidence relating to the requisite period:

1. A September 22, 2004, declaration from general manager of Yellow Cab Co-op, who stated that the applicant worked as an independent contractor with the Co-op. She provided a copy of the applicant's Application for Membership with the Co-op, dated January 1, 1985. She stated that prior to this date the applicant was a driver who leased a cab from one of the Co-op Members. She further stated that while she cannot pin point the exact start date of the applicant's employment, she remembers that he began working shortly after she became a supervisor in 1982. This information is based on the declarant's memory, and if taken at face value, the applicant began employment sometime in 1982. However, it does not establish that the applicant entered the United States prior to January 1, 1982, or that he continuously resided in the United States throughout the statutory period. In addition, the declaration failed to indicate when the applicant's membership was terminated and the applicant's place of residence during the employment/membership period. While this declaration provides evidence of the applicant's presence in the United States in January 1985, it can be afforded only minimal weight as evidence of his continuous residence in the United States sometime in 1982 throughout the remainder of the statutory period.
2. Six affidavits, dated in September 2004, from [redacted] While the affiants described how

they knew the applicant, the affidavits are significantly lacking in relevant detail and fail to provide sufficient information that would indicate direct personal knowledge of the applicant's entry into the United States prior to January 1, 1982, his places of residence, the frequency of their contact, or the circumstances of his residence during the years of their claimed relationship. Thus, the affidavits lack probative value and have only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

3. A September 24, 2004, affidavit from who stated that the applicant resided at [redacted] from 1980 to 1984, worked as a cab driver during 1981 and 1987 at Yellow Cab Co., and left the United States in 1984 for a brief visit to Nigeria. It is noted that this affidavit is inconsistent with the applicant's own Form I-687, Application for Status as a Temporary Resident, dated October 10, 1989. In his Form I-687, the applicant never stated that he resided at the above address. Rather, the applicant stated that he resided at [redacted] June 1979 to November 1981, and at [redacted] from December 1981 to July 1984. In addition, the applicant stated that he worked for the Yellow Cab Co-op from June 1979 through August 1988. These discrepancies seriously detract from the credibility of the affiant. Thus, this affidavit cannot be afforded any weight as evidence of the applicant's residence in the United States during the requisite period.

For the reasons noted above, the affidavits/declarations submitted in support of the applicant's claim have been found to lack credibility or to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. Although the applicant submitted several affidavits/declarations, all of the documents in the record that refer to the relevant years lack sufficient detail to be found credible or probative; not one affiant indicates direct personal knowledge of the applicant's method of entry into the United States prior to 1982 or credibly attests to his presence in the United States throughout the duration of the statutory period. In one case, the affiant provided inconsistent and contradictory information regarding the applicant's claimed dates and places of residence, as well as the applicant's employment dates. Although some credible evidence of the applicant's residence in August 1984 exists in the record, there is minimal evidence of residence prior to that date.

In addition, the record indicates several inconsistencies in the evidence used to support the applicant's claim. The director noted these inconsistencies in the Notice of Intent to Deny (NOID), dated February 3, 2005, and the Notice of Decision (NOD), dated February 3, 2006. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Although the applicant responded to both notices, he failed to present independent, objective evidence to reconcile the discrepancies. The applicant submitted his own affidavits and previously submitted evidence.

Specifically, the director noted that the record contained the applicant's G-325A, Biographic Information, dated May 15, 1986. The applicant stated that he worked for Chemical and Allied Products in Nigeria from January 1982 until August 1984. Although the G-325A is clearly

signed by the applicant, the record indicates that he disputes that the information is true and correct. The record also contains a declaration, dated August 6, 1984, from [redacted], personnel/admin manager of Chemical and Allied Products Limited in Lagos, Nigeria. Mr. [redacted] stated that the applicant is an employee of the company and taking annual leave for four weeks on August 17, 1984. He stated that the applicant is expected back at the end of September 1984. On appeal, in an affidavit dated February 25, 2004, the applicant contends that this declaration is fraudulent. He contends that he has never worked for this company and submitted the declaration solely to facilitate the approval of a visa to the United States in 1984. However, the applicant failed to submit any independent, objective evidence to address this discrepancy and confirm the veracity of his claim.

Furthermore, in his G-325A, the applicant stated that he resided in Nigeria from November 1981 to August 1984. Again, the applicant asserts that this information is a mistake. In his own undated, handwritten declaration, the applicant stated that his family has always referred to his family's house in Nigeria as "our place of residence" whether or not he physically resided there. While this explanation may seem reasonable, it does not explain why the applicant subsequently indicated his United States places of residence from October 1984 and beyond. If his explanation is taken at face value, then it seems logical that he would have also indicated his family's address in Nigeria as his place of residence beyond 1984; however, he listed U.S. addresses. Regardless of the above, the applicant failed to submit any independent, objective evidence to reconcile this discrepancy and to support the veracity of his claim.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime an application includes numerous errors and discrepancies, and the applicant fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the applicant's assertions. The applicant was given an opportunity on appeal to resolve these discrepancies, but failed to do so.

The director also noted discrepancies regarding the applicant's previous marriages. In an affidavit, dated June 17, 1986, the applicant stated that his marriage to [redacted] was his first marriage. He also stated that he was never married in Nigeria and never claimed to be married. The record also includes a declaration from [redacted], who stated that she married the applicant on April 19, 1986, in Milwaukee, Wisconsin. The record contains a certificate of marriage between the applicant and [redacted] on April 19, 1986. The evidence in the record also contains a Sworn Affidavit as to Dissolution of Marriage, which indicates that the applicant was married to [redacted] in Nigeria on December 1981. The affidavit, which was signed by the applicant in Nigeria, dissolved the marriage on August 20, 1984. The above evidence contradicts the applicant's own statement. Although the applicant subsequently disclosed all of his prior marriages on his G-325A, dated March 25, 2002, it tends to demonstrate the applicant's lack of credibility.

Finally, the director noted that the record contains the applicant's OF-156, which contains numerous discrepancies regarding his marital status, employment and residence. On appeal, counsel asserts that the applicant lied on his OF-156 regarding his employment in Nigeria in order to procure a U.S. visa in 1984. While the applicant contends that his OF-156 contains misrepresentations solely to facilitate the approval of a visa to the United States, he failed to submit independent, objective evidence on appeal to point to where the truth lies. As noted previously, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. In this case, his assertions regarding his entry and residence during the statutory period are not supported by sufficient credible evidence in the record.

The AAO finds that, upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the applicant has not shown by a preponderance of the evidence that he resided in the United States for the requisite period.

Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the lack of credible supporting documentation and the inconsistencies noted in the record, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.