U.S. Department of Homeland Security
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Washington, DC 20529-2090
MAIL STOP 2090

U.S. Citizenship and Immigration Services

L2

[redacted]

FILE: [redacted] Office: NEW YORK Date: DEC 0 2 2008

MSC 02 120 64961

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. 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.

John F. Grissom, Acting Chief
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, New York, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district 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. The director noted an inconsistency in the applicant's testimony and application.

On appeal the applicant asks that CIS reconsider his application.

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).

An applicant must establish eligibility by a preponderance of the evidence. 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.

Citizenship and Immigration Services (CIS) regulations provide an illustrative list of contemporaneous documents that an applicant may submit to establish presence during the required period. 8 C.F.R. § 245a.15(b)(1); *see also* 8 C.F.R. § 245a.2(d)(3)(vi)(L). Such evidence may include employment records, tax records, utility bills, school records, hospital or medical records, or attestations by churches, unions, or other organizations so long as certain information

is included. The regulations also permit the submission of affidavits and any other relevant document, but applications submitted with unverifiable documentation may be denied. Documentation that does not cover the required period is not relevant to a determination of the alien's presence during the required period and will not be considered or accorded any evidentiary weight in these proceedings.

On July 14, 2007, the director sent the applicant a Notice of Intent to Deny (NOID), which stated that the evidence submitted by the applicant was insufficiently probative of continuous unlawful residence in the U.S. from prior to January 1, 1982 through May 4, 1988, and continuous physical presence in the U.S. from November 6, 1986 through May 4, 1988.

The applicant submitted a written response on August 13, 2007.

On August 16, 2007, the director denied the application because the applicant had failed to establish his continuous unlawful presence during the required period, and noted inconsistencies in the statements provided by affiants.

On appeal the applicant asks that CIS reconsider his application.

Relevant to the period in question the record contains the following evidence:

(1) Statement by [redacted] asserting she has known the applicant since November 1981 as a family friend.
(2) Statement from asserting that he has known the applicant since November 1981 as a next door neighbor.
(3) Statement from asserting that he used to see the applicant at festivals and cultural activities from 1981 to 1988.
(4) Statement from asserting he has known the applicant since 1987.
(5) Statement from asserting that the applicant lived with him from November 1981 to May 1987.
(6) Statement from [redacted] asserting that the applicant worked for him from January 1981 to March 1990.
(7) Statement from stating that he misstated several facts during a telephonic interview with the director concerning his prior affidavits.

As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation. The minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.12(e).

The general lack of detail concerning the applicant's whereabouts and activities during the required period reflects poorly on his assertions of continuous unlawful residence and presence. The applicant has made alleged a minimal body of facts in an attempt to satisfy the criteria for legalization, leaving CIS with no context in which to verify or corroborate his assertions. He has not provided any evidence of his travel to Canada in 1987, any evidence of his travel through

Canada to reach the United States, any evidence of his actual entry to the United States, any contemporaneous evidence of his employment (such as pay stubs, cashed checks, bank deposits), any evidence of his day to day life in the United States (such as medical bills, receipts for retail purchases, driver's licenses, registrations, etc.), and has failed to provide any level of detail with regard to his day to day life and activities during the required period to such a degree that his assertions lack context and are suspect. As noted during an interview in 1992, the applicant asserted that he worked at a coffee shop from 1982 to 1987, but could not 'remember' where he had worked for the last five years. Without the context in which to view the applicant's assertions they appear isolated factually, do not present an overall picture of the applicant's residence and presence, are not corroborated by other assertions contained in the record, and are not amenable to verification. When the facts asserted in the record are viewed in their totality with the evidence presented they are not sufficiently supported to establish eligibility.

The applicant has not submitted any primary evidence, and relies entirely on affidavits to establish eligibility for the required period. However, documents which generically assert an affiant has known an applicant since a particular year are not sufficiently probative to support assertions of eligibility. Casual acquaintance with an applicant such as meeting someone at a party, seeing them in church, or seeing them on the street corner, is not sufficient to demonstrate that such affiant has actual direct knowledge of an applicant's continuous, unlawful residence. Such casual knowledge of an applicant lacks the context to be sufficiently probative such that CIS can make an informed determination that the applicant has been residing continuously in an unlawful status for the duration of the required period.

The alien must submit *evidence* of his eligibility. Submitting a third party statement in lieu of evidence requires that such statement consist of more than the simple statement such as "I know the applicant has been living in the United States since 1979." An affidavit should contain sufficient detail to indicate that the affiant has actual, direct knowledge of an applicant's presence and residence. Testimony based on second-hand knowledge is not credible. In this case the affidavits submitted are very general in nature, and it is not clear the affiants have actual direct knowledge of the facts to which they are testifying. The director attempted to contact the affiants, but only one affiant would accept private calls. As the director noted that affiant provided answers and information inconsistent with his affidavit, which the applicant and the affiant now claim is due to his ill health. In other instances it is not clear what the frequency of contact was between the applicant and the affiants, or how they came to know the details of the applicant's residence history. In some cases the information provided is itself inconsistent, as with the statement at No. 6 above, which claims that the applicant resided at a single address from 1981 to 1990, contradicting the applicant's own testimony and the affidavits submitted by [redacted]. None of the affiants provided documentation which might corroborate their own assertions, such as proof of ownership of the coffee shop where the applicant supposedly worked, or copies of utility bills paid on behalf of the applicant in someone else's name as claimed in the document at No. 7, above.

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.