**U.S. Department of Homeland Security**
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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: SAN FRANCISCO Date: JUL 03

MSC 02 225 62778

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.

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, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant failed to establish that he entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988, as required under section 1104(c)(2)(B) and (C) of the LIFE Act.

On appeal, the applicant submits a brief and additional documentation.

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 states 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.

The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documents that an applicant may submit as evidence in support of his or her application.

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.

While affidavits may be accepted as "other relevant documentation" in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's unlawful continuous residence during the requisite time period. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The record reflects that the applicant, a native and citizen of Nigeria, claims to have entered the United States without inspection on February 2, 1981, and to have departed and returned (again without inspection) to the United States on only one occasion - from May 8, 1987, to May 29, 1987, in order to attend his grandmother's funeral.

The record reflects that on December 4, 1989, the applicant submitted a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act). On his Form I-687, the applicant listed his addresses and employment in the United States as follows:

Residences

- February 1981 to June 1984: [redacted], Bronx, New York.
- January 1984 to present (December 1984): [redacted], Bronx, New York.

Employment

- February 21, 1981 to May 15, 1986: Gaseteria Oil Corp., Long Island, New York.
- July 10, 1986 to present (December 1984): Citgo Oil Corp., Bronx, New York.

In support of the Form I-687, the applicant submitted affidavits from acquaintances attesting to the applicant's above addresses and continuous residence in the United States, as well as postal envelopes purportedly mailed to him in the United States from Nigeria between 1981 and 1985. He also submitted "flight logs" - most of which contained entries after 1988, and only three which showed entries between 1981 and 1988 - as well as copies of his pilot licenses from 1986 and 1987.

The applicant was interviewed in connection with his Form I-687 on May 24, 1993. The record indicates that an audio-visual tape recording of that interview is housed in the San Francisco district

office (SFR). Subsequent to the interview, SFR forwarded an inquiry to the Forensic Document Laboratory (FDL) in Mclean, Virginia, requesting the FDL to determine the authenticity of the envelopes submitted by the applicant. The FDL responded that the envelopes were fraudulently constructed.

The applicant was again interviewed on July 28, 1993. At that time, the applicant admitted that the envelopes were not valid and that he had "made" them because he had thrown away the originals. The record indicates that an audio-visual tape recording of this interview is also housed in SFR. Upon termination of the interview, the applicant was given a letter (on a Form I-72) stating:

> "You have submitted envelopes to prove residence which you admit are fraudulent. This has been confirmed by the [FDL]. The only physical evidence you have submitted of your claimed departure, a passenger manifest, contains incorrect airport codes and therefore does not appear to have been issued by an airline company. Your testimony lacks credibility, and you have no other credible evidence to support your claims. Your other physical evidence of your presence in the U.S. starts in July of 1990. You have failed to establish the requisite residence in the U.S. from 1-1-82 to 5-4-88, the requisite departure and reentry, and the requisite discouragement necessary for CSS class membership."

The applicant filed the current Form I-485, Application to Register Permanent Resident or Adjust Status, on May 13, 2002. On May 24, 2004, the applicant was interviewed in connection with this application. In a Notice of Intent to Deny (NOID) the application, the district director requested the applicant to submit evidence demonstrating his continuous unlawful residence in the United States from prior to January 1, 1982, through May 4, 1988, and continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988. The district director also requested the applicant to submit a list of his residences in the United States since 1982 and a copy of his pilot's license. The applicant was afforded 30 days in which to provide a response to the NOID. In a response received on September 18, 2003, the applicant submitted the following:

1. A letter, notarized on July 11, 2003, from [redacted], stating that he has known the applicant since approximately 1979 when they met through a mutual friend in Nigeria, and that the applicant "informed" him of his (the applicant's) entry into the United States. Mr. [redacted] does not attest to any personal knowledge of the events and circumstances regarding the applicant's life in the United States – other than to state that the applicant resided with him in Oakland, California, from an unspecified date until 1987. As such, the affidavit has little probative value.
2. A letter, notarized on August 21, 2003, from [redacted], stating that he employed the applicant to work at his restaurant on June 10, 1982, and that his employment lasted four months. The letter fails to meet the regulatory requirements set forth under 8 C.F.R. § 245a.2(d)(3)(i).
3. A notarized letter, dated July 8, 2003, from [redacted], stating that he was a flight instructor at Aviation Training International from 1980 to 2000, that the applicant

received training at the company in 1982, and that Mr. Akpala gave the applicant flight instruction from unspecified dates in 1984 through 1987 for completion of his private and instrument pilot license.

The applicant also resubmitted documentation previously provided in support of his Form I-687, and a list of his addresses in the United States indicating that he lived in two different places during overlapping time periods: in Bronx, New York (from February 1981 through November 1989), and in Oakland, California (from September 1981 to December 1987).

In a Notice of Decision (NOD), dated December 13, 2005, the district director denied the application, noting that the applicant had previously submitted admittedly fraudulent documentation in connection (with his Form I-687), and that he had failed to submit sufficient credible and verifiable evidence to establish his entry into the United States before January 1, 1982, and continuous unlawful residence from then through May 4, 1988.

On appeal, the applicant asserts:

- The documentation he has submitted is authentic, that he never made an admission regarding false documents, and the flight manifest from his trip to Nigeria was valid. This assertion contradicts the evidence of record, previously discussed.
- He had fewer flights logged prior to 1988 than after because of limited resources. However, in 1984, he received financial support from his father that enabled him to attend flight school on and off between 1984 and 1987, while splitting his time between living in California and New York. He began preparations to relocate to Oakland after receiving his father's financial support in 1984 and actually relocated in 1987. These assertions contradict information previously provided on his Form I-687, submitted in December 1989, at which time he listed Bronx, New York, as his only residence in the United States since his alleged entry in February 1981.
- His personal belongings from prior to 1988 were destroyed or auctioned off by a storage company in Oakland, California, because he was unable to make timely payments. A letter from StorQuest Self Storage (previously U.C. Mini-Storage), dated February 7, 2006, submitted by the applicant on appeal in support of this assertion merely states that the applicant was a tenant during an unspecified time period and that his "stored belongings were lost...[T]he records reveal little to justify the disappearance..."

In support of the appeal, the applicant submits additional documentation to establish his entry into the United States prior to January 1, 1982, and his continuous unlawful residence in the United States from then through May 4, 1988, including: a "declaration" regarding his life in the United States; additional affidavits from acquaintances; photographs allegedly taken of him in the United States in 1981; and, other documentation. The applicant concludes that the affidavits and evidence he has submitted are sufficient to meet the applicable evidentiary standards, and that Citizenship and

Immigration Services (CIS) failed to provide "clear and persuasive reasons for rejection" of his application, as required in *Vera-Villegas v. INS*, 330 F 3d. 1222 (9th Cir. 2003).

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).

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),), 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, 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 primarily of third-party affidavits ("other relevant documentation").

Furthermore, although the applicant claims on appeal that he has never submitted anything other than authentic evidence, it is a matter of record that he previously provided CIS with fraudulent documents in connection with his Form I-687. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The AAO concludes that the applicant has not met his burden of proof. He 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.