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: HOUSTON Date: JUL 17 2008

MSC 03 182 63281

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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, Houston, Texas, and is now before the Administrative Appeals Office 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 resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel states that the applicant has clarified any inconsistencies between his testimony and the information that he provided on his initial application, and has met his burden of proof. The applicant provides additional documentation in support of the appeal.

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 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 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).

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.

On a form to determine class membership, which he signed under penalty of perjury on October 16, 1990, the applicant stated that he first entered the United States on August 20, 1981, pursuant to a non-immigrant visa. He stated that he left the United States on September 14, 1987, and returned on October 15, 1987, again pursuant to a non-immigrant visa. The record does not reflect any entrances by the applicant pursuant to a visa, and the applicant provided no evidence of such an entry. On April 4, 1994, the applicant signed, under penalty of perjury, another form to determine class membership and stated that he first entered the United States in January 1982 and had not left since that time.

On his Form I-687, Application for Status as a Temporary Resident, which he signed under penalty of perjury on October 16, 1990, the applicant stated that he was absent from the United States from September 14, 1987, to October 15, 1987, when he visited his family in Mexico. The applicant stated that he lived at [redacted] in Houston, Texas from August 1981 to May 1985, and at [redacted] from May 1985 to September 1990. The applicant also stated that he worked for [redacted] in Houston from August 1981 to April 1990.

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 October 19, 1990, affidavit from [redacted], in which she stated that the applicant resided at [redacted] from January 1, 1981, to the date of the affidavit. This information is inconsistent with the information provided by the applicant on his Form I-687 application, in which he stated that he lived at [redacted] from August 1981 to May 1985 and at [redacted] from May 1985 to September 1990. Further, the affiant alleges that the applicant lived at the stated address at least seven months before the applicant stated that he entered the United States.

2. An October 19, 1990, affidavit from [redacted], in which he stated that the applicant resided at [redacted] from March 19, 1981, to October 19, 1990. This information is inconsistent with the information provided by the applicant on his Form I-687 application, in which he stated that he lived at [redacted] from August 1981 to May 1985 and at [redacted] from May 1985 to September 1990. Further, the affiant alleges that the applicant lived at the stated address at least five months before the applicant stated that he entered the United States.

3. An October 19, 1990, affidavit from [redacted] in which the affiant stated that the applicant resided at [redacted] from May 3, 1981, to the date of the affidavit. This information is inconsistent with the information provided by the applicant on his Form I-687 application, in which he stated that he lived at [redacted] from August 1981 to May 1985 and at [redacted] from May 1985 to September 1990. Further, the affiant alleges that the applicant lived at the stated address at least three months before the applicant stated that he entered the United States.

4. An undated notarized "affidavit of fact" signed by [redacted], in which she stated that she had known the applicant since August 10, 1981. Ms. [redacted] stated that she and the applicant worked together until April 10, 1990, cleaning and "doing windows" for newly built houses. Ms. [redacted] stated that they also helped in sheet rocking and fixing floors, and that the applicant was paid $150 per week, and $60 on the weekend. Mrs. [redacted] did not identify herself as the applicant's employer. Further, her letter does not meet the requirements of 8 C.F.R. § 245a.2(d)(3)(i), in that it does not provide the applicant's address at the time of his employment, identify the exact period of

employment, or indicate whether the information was taken from company records. Accordingly, the document lacks probative value in this proceeding.

5. An October 19, 1990, affidavit from [redacted], in which he stated that the applicant resided at [redacted] from November 25, 1981, to the date of the affidavit. This information is inconsistent with the information provided by the applicant on his Form I-687 application, in which he stated that he lived at [redacted] from August 1981 to May 1985 and at [redacted] from May 1985 to September 1990.

6. An October 19, 1990, affidavit from [redacted], in which he stated that the applicant resided at [redacted] from December 20, 1981, to the date of the affidavit. This information is inconsistent with the information provided by the applicant on his Form I-687 application, in which he stated that he lived at [redacted] from August 1981 to May 1985 and at [redacted] from May 1985 to September 1990.

7. An April 3, 1994, statement from [redacted], in which she stated that she had known the applicant since he first arrived from Mexico in the early part of 1982. Ms. [redacted] stated that the applicant came to live with friends who lived in the apartment complex where she was the resident manager.

8. Envelopes addressed to and from the applicant showing his address as [redacted] in Pasadena, Texas. The envelopes bear postmarks dated in 1985, 1986 and 1987. The applicant also submitted an envelope addressed to him at [redacted] in Kerrville, Texas with a postmark of September 4, 1985. The applicant did not allege that he had ever lived in Pasadena or Kerrville, Texas.

9. Envelopes addressed to the applicant at [redacted] in Houston with postmarks dated in 1985 and 1986. The applicant stated on his Form I-687 application that he lived at [redacted] in Houston during the dates indicated on the envelopes. Further, the dates of the postmarks overlap with those on envelopes addressed to the applicant in Pasadena, Texas. We note that the applicant stated on his Form I-687 application that he began living at the [redacted] address in September 1990.

The record contains interviewer's notes dated July 5, 2005, signed by the interviewer, the applicant and the applicant's representative. According to the notes, the applicant stated that he entered the United States in August 1981 through the Laredo border, and that he has lived in Houston throughout the time he has been in the United States. The applicant further stated that he started cleaning [redacted]'s home in 1981 but didn't meet her until 1987. He stated that he worked for her until 1987, and then began working for a company cleaning floors. The applicant identified [redacted] as a notary public who he met in 1990. We note that all of the affidavits submitted by the applicant that are dated October 19, 1990, were notarized by [redacted]

In a Notice of Intent to Deny (NOID) dated July 27, 2005, the director advised the applicant of the discrepancies in his evidence, and gave him 30 days in which to submit evidence in rebuttal. In response, the applicant submitted an affidavit in which he stated that he did not recall ever stating that he arrived in the United States in 1982, that he met [redacted] in 1981, and that he traveled outside the United States in 1987. 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). The applicant submitted no competent objective evidence to support these statements. The applicant's unsupported statements do not meet his burden of proof.

On appeal, counsel submits a copy of the applicant's response to the NOID, in which he stated that the applicant had met his burden of proof.

The applicant's evidence contains numerous unresolved inconsistencies, including affiants who claimed that he lived in the United States prior to the date he alleged that he first arrived. Additionally, the envelopes provided by the applicant contain addresses at which the applicant did not claim to have lived or where he claimed to have lived after the qualifying period.

Given the applicant's reliance upon documents with little or no probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period. Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

The record reflects that on May 10, 2205, the applicant filed a Form I-687 application, CIS receipt number MSC 05 222 11241, pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.,* CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.,* CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements). The record reflects that the director denied the application on September 17, 2005. The denial of that decision is not an issue in this decision. We note that while counsel submits an August 25, 2005 letter purporting to appeal the decision, the record does not contain a Form I-694, Notice of Appeal of Decision under Section 210 or 245A of the Immigration and Nationality Act, or evidence of payment of the filing fee.

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