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

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FILE: [redacted] Office: NEWARK Date: JUL 30 2008

MSC 02 225 60431

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 District Director, Newark, 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 because the documents the applicant submitted were not sufficient to support his claim of eligibility. The director noted that some of the evidence submitted was outside the required time frame. The director also noted that the listing the applicant provided of his trips outside the United States contradicted Service records, which indicated different and additional dates of travel. Finally, the director stated that the quality of the documents submitted by the applicant was insufficient because the notarized letters were self-serving and the applicant did not submit any evidence such as bills, receipts, or correspondence to substantiate his claim.

On appeal, counsel for the applicant asserts that the applicant has shown by clear and convincing evidence that he has resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988. Counsel asserts that because the applicant was in an unlawful status, he is not required to only submit official documents. Counsel asserts that the applicant submitted several documents and affidavits to prove he has been physically and continuously present in the United States for the period requested.

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 than on May 13, 2002, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On March 4, 2003, the applicant appeared for an interview based on his application. That day, the interviewing officer presented the applicant with a Form I-72, Request for Evidence (RFE), requesting that the applicant explain the addresses listed on his application and proof of presence in the United States prior to January 1, 1982, and proof of unlawful physical presence in the United States from January 1, 1982, to May 4, 1988.

On July 19, 2005, the director issued a Notice of Intent to Deny (NOID) the application. The director noted that some of the evidence submitted was outside the required time frame and that the listing the applicant provided of his trips outside the United States contradicted Service records, which indicated different and additional dates of travel. The director stated that the quality of the documents submitted by the applicant was insufficient because the notarized letters were self-serving and the applicant did not submit any evidence such as bills, receipts, correspondence, etc., to substantiate his claim. The director informed the applicant that he had 30 days from the receipt of the NOID to submit evidence to overcome the director's intent to deny his application. In response, the applicant submitted four letters and affidavits, five photocopies of the same two pages of his passport, and the results of a vision test conducted by the State of New York Department of Motor Vehicles.

On August 25, 2006, the director denied the application, finding the documentation submitted by the applicant inadequate to establish his burden of proof.

On appeal, counsel for the applicant asserts that the applicant has shown by clear and convincing evidence that he has resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988. Counsel asserts that since the applicant was in an unlawful status he is not required to only submit official documents. Counsel asserts that the applicant submitted several documents and affidavits to prove he has been physically and continuously present in the United States for the period requested.

The issue in this proceeding is whether the applicant has provided sufficient credible evidence to demonstrate that he was continuously physically present in the United States during the requisite period.

The following evidence relates to the requisite period:

Contemporaneous Evidence

- The results of a vision test dated November 22, 1986, and conducted by the State of New York Department of Motor Vehicles and a New York State driver's license issued on November 25, 1986;

- Two handwritten fill-in-the-blank receipts dated October 15, 1981, and May 10, 1983. The October 15, 1981, receipt indicates that the applicant, whose address is listed simply as [redacted] paid $200 for "rent of a room". The May 10, 1983, receipt indicates that the applicant, at [redacted] paid $150 for "rent payment;" and,

- Photocopies of several pages of the applicant's Haitian passport, issued in Port-au-Prince on June 22, 1979, including a B-2 visitor's visa issued to the applicant by the U.S. Embassy in Port-au-Prince on July 13, 1982, with a stamp indicating an entry to the United States on July 21, 1982 and another B-2 visitor's visa issued to the applicant by the U.S. Embassy in Port-au-Prince on September 21, 1982, with a stamp indicating an entry to the United States on October 15, 1982.

These documents are insufficient to establish that the applicant entered the United States prior to January 1, 1982 and continuously resided in an unlawful status in the United States from before that date through May 4, 1988. In fact, the pages from the applicant's passport indicate that he entered the United States after January 1, 1982. The rent receipts can be given little if any evidentiary weight because they do not establish that the applicant entered before January 1, 1982, or that he resided continuously from before January 1, 1982, through May 4, 1988. Their authenticity cannot be verified because they are not accompanied by a letter from the applicant's landlord or a lease. The vision test and driver's license indicate that the applicant was physically present in Brooklyn, New York in November 1986, but not that he resided continuously in the United States from before January 1, 1982, through May 4, 1988. Having examined each piece of evidence, both individually and within the context of the totality of the evidence, these documents are insufficient to establish the applicant's entry to the United States before January 1, 1982, and his continuous residence in an unlawful status from before that date through May 4, 1988.

Letters and Affidavits

An affidavit sworn to on March 7, 2002, from [redacted] stated that he had known the applicant for more than 15 years, ever since they were together in Haiti. He stated that he knew the applicant arrived in Miami, Florida, on June 6, 1981. The affiant provides no details regarding his claimed relationship with the applicant for over 15 years that would lend credibility to his statements. Therefore, this letter can be given minimal weight as evidence of the applicant's residence in the United States during the requisite period;

- An updated affidavit sworn to on August 9, 2005, from [redacted] Mr. [redacted] states that he has known the applicant since he lived in Haiti. He asserts that, in his previous affidavit, he stated that he had known the applicant for 15 years and that he should have been more precise. [redacted] asserts that he first knew the applicant while he was attending primary school in Haiti, and that at the time, the applicant was in secondary school. He states that he entered the United States in 1980 and that he knows the applicant entered in June 1981 because he spoke to the applicant several times by telephone at the time. He states that he continued to speak to the applicant when he moved to Brooklyn a few years later, until the applicant joined him in New Jersey in about 1986. He states that since the applicant arrived in New Jersey, that they have been friends. [redacted] does not explain how he specifically remembers that it was June 1981 when the applicant arrived in the United States nor does he specify where the applicant lived before he moved to New Jersey in 1986. Again the affiant has not provided sufficient detail to support the applicant's claim of continued residence during the requisite time period. This letter, thus, can be given little weight as evidence of the applicant's residence in the United States during the requisite period;

- An affidavit sworn to on March 8, 2002, from [redacted] states that he has known the applicant for more than 19 years, ever since they were together in Haiti. He states that he knows the applicant arrived in Miami, Florida, on June 6, 1981. Again, the affiant provides no details regarding his claimed relationship with the applicant for over 19 years that would lend credibility to the applicant's statements that he has resided continuously in the United States since before January 1, 1982. Furthermore, [redacted] does not explain how he specifically remembers that it was June 1981 when the applicant arrived in the United States. Therefore, this letter can be given minimal weight as evidence of the applicant's residence in the United States during the requisite period;

- An updated affidavit sworn to on August 9, 2005, from [redacted]. Mr. [redacted] states that he had been residing in the United States for a few years when the applicant arrived here in June 1981. He states that he knew the applicant arrived in the United States in June 1981 because they had been in telephonic communication prior to his arrival in the United States. He states that he was first

acquainted with the applicant in Haiti because they lived in the same neighborhood in Port-au-Prince. He states that, together, they have been living in New Jersey since about 1986. He states that he knew the applicant was aware that the applicant arrived in June 1981, but does not indicate where the applicant lived between June 1981 and 1986. For these reasons, this letter can be given minimal weight as evidence of the applicant's residence in the United States during the requisite period;

- An affidavit sworn to on August 7, 2005, from [redacted], the applicant's cousin. Mr. [redacted] states that the applicant first entered the United States in June 1981 by boat. He states that after having lived five years in Florida, he then moved to New York in 1986, where he stayed at [redacted] in Brooklyn. [redacted] states that in that same year, he bought his first house in New Jersey at [redacted] He states that since the applicant was not financially independent while living in Florida, that he supported the applicant in every way he could. He states that the applicant moved in with him in his new house and has been living with him ever since. This letter can be given little evidentiary weight as the affiant provides no evidence that he resided in the United States during the requisite period and no details of any relationship that would lend credibility to his statements; and,

- A letter dated August 7, 2005, from [redacted] states that she has known the applicant for a long time. She states that during the time he was living in East Orange, New Jersey, from November 6, 1986, to May 4, 1988, she and the applicant were good friends. She states that the applicant is a good person who is waiting to participate in the American dream. This letter can be afforded minimal evidentiary weight as it contains no details about the affiant's claimed relationship with the applicant. She does not state when, where, or how she met the applicant and does not provide the address where the applicant was living;

For the reasons stated above, these documents in support of the applicant's claim can be given minimal weight and are of little value as evidence of the applicant's continuous residence and presence in the United States for the required period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality.

The record of proceedings contains various other documents, including a letter dated February 18, 1997, stating that the applicant is currently employed by Pals Cabin in West Orange, New Jersey, and was hired in July of 1989, and a New York State driver's license issued on August 29, 1989. None of this evidence addresses the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

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 n June 1981, and to have resided for the duration of the requisite period in Florida, New York, and New Jersey. 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.

Given the insufficient evidence provided, 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.