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

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[redacted]

FILE: [redacted] Office: NEW YORK Date: JUN 11 2008

MSC 02 240 62878

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.

for 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 (director) in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988.

On appeal the applicant asserts that the evidence of record establishes his continuous residence in the United States for the requisite time period for legalization under the LIFE Act.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

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 its amenability to verification. *See* 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 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 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.

The applicant, a native of Mali who claims to have lived in the United States since August 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on May 28, 2002. At that time the record included the following documentary evidence of the applicant's residence and physical presence in the United States during the 1980s, which had been filed in February 1991 in connection with an application for status as a temporary resident (Form I-687) and an application for class membership in the CSS v. Meese class action lawsuit: [1]

- A letter from the "public information" representative of Masjid Malcolm Shabazz, a Muslim community organization in New York City, dated February 6, 1991, stating that the applicant had been a member since August 1981, attending various prayer services.

- An affidavit from a resident of Brooklyn, New York, dated February 14, 1991, stating that the applicant had been his tenant at [redacted] from August 1981 to the present, paying rent on a monthly basis.

  Three affidavits from residents of New York City, all dated February 14, 1991, stating that they knew from personal knowledge beginning in December 1981, June 1982, and January 1984, respectively, that the applicant resided at the above address in Brooklyn.

  A letter from [redacted] on the letterhead of the Hotel Remington in New York City, dated February 6, 1990, stating that the applicant was employed as a housekeeper from January 1981 to December 1985, earning a weekly income of $195 with tips.

  An affidavit from [redacted] the manager of Cycle Messenger Service Inc. in New York City, dated February 14, 1991, stating that the applicant was employed as a messenger from January 1986 to December 1989 at a weekly salary of $180.

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[1] *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993).

On October 19, 2006, the director issued a Notice of Intent to Deny (NOID), stating that the evidence of record was insufficient to establish the applicant's unlawful entry into the United States before January 1, 1982 and continuous residence in the country through May 4, 1988, as well as his continuous physical presence from November 6, 1986 through May 4, 1988. The director indicated that some of the letter and affidavit evidence dating from the early 1990s could not be verified, and that the letter from the Hotel Remington was not credible because it stated that the applicant had worked at the Hotel since January 1981, whereas the applicant did not claim to have entered the United States until August 1, 1981. The applicant was granted 30 days to submit additional evidence.

In response to the NOID counsel conceded that due to the passage of time some of the people who wrote the affidavits and letters 15 years earlier can no longer be contacted. He asserted, however, that the information they provided was verifiable at the time and was sufficient to establish the applicant's residence and physical presence in the United States for the time periods required for LIFE legalization.

On November 21, 2006, the director issued a Notice of Decision denying the application. In the director's view, the evidence of record was neither sufficient nor credible enough to establish the applicant's eligibility for legalization under the LIFE Act. The director noted the clear contradiction between the letter from the Hotel Remington stating that the applicant had worked there since January 1981 and the applicant's claim to have entered the United States on August 1, 1981. No further information or evidence had been submitted in response to the NOID to address this discrepancy.

On appeal, counsel reiterates his contention that the affidavits and letters previously submitted should be viewed as sufficient to satisfy the applicant's burden of proof for permanent resident status under the LIFE Act. Alternatively, counsel asserts that the applicant is eligible for temporary resident status under section 245A of the Immigration and Nationality Act (INA).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982, resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the country from November 6, 1986 through May 4, 1988. The AAO determines that he has not.

The letter from the "public information" representative of the Muslim community organization, as well as the affidavits from the four individuals who claim to have been the applicant's landlord or to have known him in New York from the early to mid-1980s, have common features. The have minimalist or identical fill-in-the-blank formats and limited substance. For the amount of time they claim to have known the applicant, the authors provide remarkably little information about his life in the United States, and their interaction with him over the years. The letter from the Muslim community organization representative does not state whether his

information about the applicant's activities since August 1981 comes from personal knowledge or the organization's records, and provides no information about where the applicant lived over the years. The four fill-in-the-blank affidavits contain almost no personal input from the affiants, aside from identifying the applicant's address in Brooklyn during the 1980s. Furthermore, the affidavits/letters are not accompanied by any documentary evidence – such as photographs, letters, and the like – of the authors' personal relationship with the applicant during the 1980s. In view of these substantive shortcomings, the AAO finds that the foregoing affidavits/letters have little evidentiary weight.

As for the employment letters from the Hotel Remington and Cycle Messenger Service Inc. in New York, they do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they did not declare whether the information was taken from company records and did not indicate whether such records were available for review. The letter from the Hotel Remington also neglected to state the applicant's address during his time of employment, did not provide a phone number for verification purposes, and did not identify Peter Goldsmith's position with the hotel. Furthermore, the applicant still has not addressed the evidentiary discrepancy of the hotel's claim to have employed him beginning in January 1981 – half a year before his alleged entry into the United States on August 1, 1981. Even if the AAO were to give more credence to the other employment letter from Cycle Messenger Service Inc., it would not show that the applicant was resident in the United States before January 1986, when his employment with the company allegedly began. Due to the infirmities discussed above, the employment letters are not persuasive evidence of the applicant's continuous residence in the United States during the years 1981 to 1988.

Based on the foregoing analysis, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982, resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988, as required under section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A). Therefore, the applicant is ineligible for permanent resident status under the LIFE Act. [2]

The appeal will be dismissed, and the application denied.

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

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[2] The failure to establish his continuous residence and continuous physical presence in the United States during the requisite time periods also makes the applicant ineligible for temporary resident status under section 245A(a)(2) and (a)(3) of the INA, 8 U.S.C. § 1255a(a)(2) and (a)(3).