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

[redacted]

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FILE: [redacted] Office: CHICAGO Date: JUN 11 2008

MSC 02 117 62279

IN RE: Applicant: [redacted]

PETITION: 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 (director) in Chicago, Illinois. 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, as required for legalization under the LIFE Act.

On appeal, counsel asserts that the evidence of record establishes the applicant's continuous residence in the United States for the requisite statutory period, in accordance with the applicable burden of proof.

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).

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1), as follows: "An alien shall be regarded as having resided continuously in the United States if *no single absence* from the United States has *exceeded forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed." (Emphases added.)

"Continuous physical presence" is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: "An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States." (Emphasis added.) The regulation further explains that "[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States." (Emphasis added.) 8 C.F.R. § 245a.16(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. *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 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 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 Nigeria who claims to have lived in the United States since June 1981, filed his application for permanent resident status under the LIFE Act (Form I-485) on January 25, 2002.

In a Notice of Intent to Deny (NOID), dated October 24, 2003, the director declared that the applicant had provided no primary or secondary evidence of his unlawful presence in the United States during the time period from January 1, 1982 through December 31, 1983 – the first two years of the requisite period for continuous residence in the United States. The only evidence of the applicant's presence in the country during 1982 and 1983, the director indicated, were affidavits from some friends and a letter from [redacted]n the director's view, this documentation was insufficient to establish, by a preponderance of the evidence, that the applicant met the requirement – for adjustment of status under the LIFE Act – of continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

The applicant did not respond to the NOID of October 24, 2003. On February 6, 2004, therefore, the director denied the application on the ground that the applicant failed to establish his eligibility for legalization under the LIFE Act.

On appeal counsel asserts that the director did not properly review the documentation of record with respect to the years 1982 and 1983. While implicitly acknowledging that the applicant had established his continuous residence in the United States from 1984 onward, the director did not give due credence, in counsel's view, to the affidavit evidence submitted by the applicant for the two preceding years. Counsel contends that those affidavits establish, in accordance with the preponderance of the evidence standard applicable under the LIFE Act, the applicant's continuous unlawful residence in the United States during the years 1982 and 1983. Since the applicant's continuous residence during the years 1984 to 1988 is not in doubt, counsel concludes that the applicant has established his continuous unlawful residence in the United States for the entire period required to adjust status under the LIFE Act to legal permanent resident.

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 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The AAO concurs with the director's implicit finding that the evidence of record – which includes originals and photocopies of such documents as the applicant's Form W-2, Wage and Tax Statements, for the years 1984 and 1985; a certificate issued to the applicant on July 20, 1984 by the American Security Training Institute in Chicago, Illinois, for completion of a training program; utility bills addressed to the applicant in 1986 and 1987; a State of Illinois identity card issued to the applicant in January 1987; and a transcript from Olive-Harvey College in Chicago, Illinois, of the applicant's coursework and grades from the spring of 1986 to the fall of 1988 in earning an AA (associate of arts) degree in business administration – is sufficient to establish the applicant's continuous residence in the United States during the years 1984-1988. As evidence of the applicant's residence in the United States from June 1981, when the applicant claims to have entered the United States, through the end of 1983, the record includes the following:

- A merchandise receipt from Williams Discount Furniture, dated November 19, 1981, listing some bedroom furniture sold to the applicant, whose address is identified as [redacted] in Chicago.

- An order form of the Church Soap & Chemical Company, identifying the applicant, with an address of 4[redacted] as the orderer of some dishwashing detergent, apparently on behalf of Costa's Restaurant, for delivery to the restaurant at [redacted]12, 1981.

- A letter signed by the owner of [redacted] dated September 23, 2003, stating that the applicant was employed by the restaurant from December 1982 to December 1984 as a busboy and kitchen preparation worker.

- An affidavit by [redacted] resident of Chicago, Illinois, dated July 20, 1993, stating that the applicant lived with him when he first came to the United States in

July 1981, and that the applicant has resided in the United States continuously since then.

- An affidavit by [redacted], a resident of Calumet City, Illinois, dated January 9, 2002, stating that he has known the applicant since December 1981 when they met at a church function in Chicago.

- An affidavit by [redacted], a resident of Chicago, dated January 9, 2002, stating that he has known the applicant since June 1981, and that the applicant lived with him and his mother "for the whole month of June 1981" in their home at [redacted]

- **Another affidavit by** [redacted], dated September 9, 2003, stating that the applicant resided with him and his mother in their home at [redacted] in Chicago from June 1981 to July 1985.

  An affidavit by [redacted] resident of Chicago, dated September 9, 2003, stating that the applicant resided with her and her mother in their home at [redacted] from June 1981 to July 1985.

Five of the eight documents listed above identify [redacted] in Chicago, as the applicant's address in the United States during 1981. [redacted] indicated in 2003 that the applicant lived at this address from June 1981 (the month he claims to have entered the United States) until July 1985, though [redacted] seemed to indicate in his earlier affidavit in 2002 that the applicant lived with them only for the month of June 1981. The information provided by [redacted] however, is contradicted by [redacted] who claims that the applicant resided with him when he first arrived in the United States (though he did not identify the address). Further confusing the issue of the applicant's initial residence in the United States is the application for temporary resident status (Form I-687) he filed in October 1990, in which the applicant did not list [redacted] as one of his residences in the United States. Rather, the applicant listed his addresses between 1981 and 1990 as (1) 6243 S. Morgan, in Chicago, from June 1981 to September 1984, and (2) 7546 S. Coles, in Chicago, from October 1984 to 1990.

Thus, the record is completely unclear as to where in Chicago the applicant claims to have lived in the years 1981 to 1984. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). Moreover, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.*

The merchandise receipt from Williams Discount Furniture, dated November 19, 1981, is a curious document. While the store name, street address, and telephone number are imprinted on the document, the city is not identified in the address and the business is described in the letterhead as Radio-Television sales and service. These would appear to be two unrelated

businesses. The AAO notes that there is no date stamp or other official marking from the store to authenticate the receipt, and the applicant's street address is badly misspelled on the document as [redacted] instead of Berkeley. For the reasons discussed above, the AAO determines that the receipt has little probative value.

The order form from Church Soap & Chemical Company, dated December 12, 1981, also lacks a date stamp or other official marking from the business to authenticate the document. While a hand-written notation on the form appears to indicate that the order was placed by the applicant on behalf of Costa's restaurant, the record is conflicting as to whether the applicant was actually working at the restaurant in 1981. The applicant's Form W-2s for 1984 and 1985 seem to confirm that he worked during those years for Costa's Inc. at [redacted] Street in Chicago. In light of this evidence, it is inexplicable that the applicant did not list Costa's as one of his employers in the United States on the Form I-687 he filed in 1990. The employers he listed on that form for the time period of 1981 to 1990 were (1) Orly's Restaurant at [redacted] in Chicago, from December 1981 to July 1984, and (2) Pershing Livery Company at [redacted] Street, in Chicago, from August 1984 to 1990. In view of the evidentiary discrepancies and confusion discussed above, the AAO is not persuaded that the applicant was employed by Costa's Restaurant before 1984.

The letter from the owner of Orly's Café, dated September 23, 2003, stating that the applicant was employed by "Orly's Restaurant" from December 1982 to December 1984 as a busboy and kitchen preparation helper, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because it did not provide the applicant's address at the time of employment, did not declare whether the information was taken from company records, and did not indicate whether such records were available for review. The AAO also notes that the dates of employment and job duties described in the letter differ from the information provided by the applicant in the Form I-687 he filed in 1990, which described the position as a "waiter" and gave his dates of employment as December 1981 to July 1984. In addition, the letter from Orly's Café at [redacted] in September 2003 did not specifically confirm that this business is the same as, or a successor to, the Orly's Restaurant located at [redacted] in the 1980s. Furthermore, the record contains no W-2 Forms from the applicant's employment with Orly's Restaurant, in contrast to his employment with Costa's Inc. For all of the foregoing reasons, the AAO concludes that the employment letter from the owner of Orly's Cafe has little evidentiary weight. [1]

Finally, the affidavits from the various acquaintances who claim to have known and/or lived with the applicant since he came to the United States in 1981 are woefully short on substance. They contain almost no information about the applicant's life in the United States during the 1980s,

[1] Because of the owner's statement that the applicant's employment with Orly's Restaurant began in December 1982, the letter could not be cited in any event as evidence of the applicant's continuing residence in the United States from before January 1, 1982.

where he worked, and his interaction with the affiants. Moreover, as previously discussed, the affidavits are inconsistent with each other, and with information provided earlier by the applicant, in regard to the applicant's residential addresses during the early and mid-1980s. None of the affidavits are supported by any documentation of the authors' own identity and presence in the United States during the pertinent years of 1981 to 1988, which calls into question the basis of their knowledge that the applicant was resident and physically present in the country during that time period. Nor have the affiants submitted any documentary evidence – such as photographs, letters, and the like – that they had a personal relationship with the applicant during the 1980s. For the reasons explained above, the AAO concludes that the personal affidavits have little evidentiary weight.

Based on the foregoing analysis, the mass of conflicting evidence in the record, and the applicant's reliance upon affidavits and letters with minimal probative value, the AAO concludes that the applicant has failed to overcome the ground for denial. While the record is sufficient to establish the applicant's continuous residence in the United States in an unlawful status from 1984 through the end of the statutory period for LIFE legalization on May 4, 1988, it is insufficient to establish that the applicant's continuous residence in the United States began before January 1, 1982, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

The appeal will be dismissed, and the application denied.

ORDER: The appeal is dismissed.