U.S. Department of Homeland Security
20 Mass Ave. NW Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: MAR 21 2008

consolidated herein]
MSC 02 235 62681

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 [or Records] 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, 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 she resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel submits a brief and additional documentation.

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 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 Poland, filed her application for permanent resident status under the LIFE Act (Form I-485) on May 23, 2002. In a Notice of Intent to Deny (NOID), dated May 18, 2005, the director cited various "omissions, discrepancies and inconsistencies" among the documents the applicant had submitted and in her testimony at her interview for LIFE legalization. For example, in her interview at the New York District Office on March 17, 2005, the applicant was recorded by the interviewing officer as stating that she arrived in the United States on November 11, 1982 with a B-2 visa, overstayed her visa until June 16, 1987, at which time she left the country, then returned to the United States with another B-2 visa on June 19, 1988, as documented on a Form I-94 in the record. The foregoing testimony, augmented by two affidavits attesting that the applicant departed the country around June 16, 1987, indicated that the applicant was not residing in the United States in an unlawful status before January 1, 1982 and did not maintain continuous unlawful residence in the United States from then through May 4, 1988. The director also referred to the affidavits submitted by the applicant, analyzed them as lacking in probative value, cited several apparent inconsistencies with the applicant's interview testimony, and concluded that the affidavits lacked credibility. In addition, the director found that some annual apartment registration forms from the 1980s and early 1990s looked like forgeries. The applicant was granted 30 days to submit additional evidence.

In response to the NOID counsel asserted that the applicant's testimony at her LIFE interview was incorrectly recorded by the interviewer, and cited information provided in several affidavits as evidence that the applicant entered the United States on November 11, 1981, not 1982. Counsel asserted that the applicant was not absent from the United States for the entire year from June 16, 1987 to June 19, 1988, as the LIFE interviewer concluded in 2005, but rather for two short-term visits to Poland during that time. As explained by counsel, the first trip lasted from June 16, 1987 to July 31, 1987 – a total of 45 days – with the applicant returning to the United States through Canada without inspection. The second trip lasted from May 10, 1988 to June 19, 1988 – a total of 40 days – with the applicant returning to the United States on her B-2 visa. Counsel contended that the inconsistent affidavit information cited in the NOID was either incorrectly understood by the director or inconsequential minutiae that was rectified in other affidavits, and that all of the affidavits are probative prima facie evidence of the applicant's continuous residence in the United States during the requisite years of 1981-1988. Counsel also asserted that the annual apartment registration forms are credible and reliable documents which demonstrate the applicant's residence in the United States during those years.

In a Notice of Decision dated August 25, 2005, the director denied the application for failure of the applicant to establish that her unlawful residence in the United States commenced before January 1, 1982, and continued uninterruptedly through May 4, 1988. The director determined

that the evidence submitted in response to the NOID failed to resolve the evidentiary discrepancies in the record. In the director's view, the applicant did not submit any documentary evidence to corroborate her claims to have entered the United States in November 1981, rather than 1982, and to have departed the United States on two short trips in the summer of 1987 and the spring of 1988, rather than a year-long absence from June 1987 to June 1988. The affidavits submitted by the applicant as evidence of her continuous residence in the United States, the director determined, were not probative enough to overcome the applicant's interview testimony because they were not supported by objective and credible documentary evidence.

On appeal counsel reiterates his contention that the previous record was sufficient to establish the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and submits some additional documentation including (1) a money transfer receipt from the applicant in New York to a recipient in Poland, dated December 16, 1983; (2) a shipping receipt from the applicant in New York to a recipient in Poland, dated May 12, 2003; (3) two money order receipts for the applicant in New York, with virtually illegible dates (claimed by counsel to be January 1, 1983, and December 5, 1986); and (4) two Travelers Express checks, allegedly from the applicant, with illegible dates (asserted by counsel to be October 1982 and December 2002).

The evidence of record still does not establish the applicant's continuous physical presence in the United States from before January 1, 1982 through May 4, 1988. The earliest legible document submitted on appeal that clearly identifies the applicant and a U.S. address is the shipping receipt dated May 12, 2003. Thus, none of the documents submitted on appeal demonstrate that the applicant was a resident of the United States before January 1, 1982. The AAO also notes that all of the documents submitted on appeal, as well as each of the Annual Apartment Registration forms in the record, dating from April 1, 1985 through April 1, 1991, identify the applicant's address as [redacted] in Brooklyn, New York. Two affidavits from acquaintances of the applicant – [redacted] on June 7, 2005, and [redacted] on June 12, 2005 – also identify the applicant's address as [redacted] from 1981 onward. This address, however, conflicts with the information provided by the applicant in the Form I-687, Application for Status as a Temporary Resident, she prepared on February 25, 1992, in conjunction with her Form for Determination of Class Membership in CSS v. Thornburgh (Meese), dated February 14, 1992. In her Form I-687, the applicant listed her residences in the United States since her initial arrival as (1) [redacted] in Brooklyn, November 1981 to June 1985; (2) [redacted] in Brooklyn, July 1985 to December 1989; and (3) [redacted] in Brooklyn, January 1990 to the present. This conflicting information reinforces the director's finding that the applicant's evidence lacked overall credibility.

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). No such competent evidence has been submitted by the applicant to reconcile the foregoing inconsistencies with respect to the applicant's residential address(es)

during the 1980s. Moreover, doubt cast on any aspect of the applicant's evidence reflects on the reliability of the petitioner's remaining evidence. *See id.*

Counsel's claim that the applicant actually entered the United States for the first time on November 11, 1981, not 1982, is consistent with the information provided by the applicant on the CSS class membership form she prepared in 1992. Thus, it seems possible that the applicant misspoke at her LIFE legalization interview in 2005, or that the interviewing officer erroneously recorded her testimony. The applicant has still produced no documentary evidence of a 1981 entry into the United States, however, unlike her subsequent entry on June 19, 1988, which is confirmed by a Form I-94.

Furthermore, if the applicant did enter the United States in November 1981 on a B-2 visa, as she claims, such a visa would likely have had a six-month validity period (like the B-2 visa she was granted in 1988). If such was the case, the applicant's unlawful status in the United States would not have begun before January 1, 1982 unless the applicant violated the terms of the visa before that date. While the applicant did claim on her Form I-687 to have begun working in December 1981 as a "housekeeper" in a private residence in Brooklyn, which would have violated her B-2 visa, the only evidence thereof is a statement prepared by J[redacted]n 1992 that she had employed the applicant in that capacity at [redacted]n Brooklyn from 1981 to 1992. This statement from [redacted] does not comport with the regulatory requirements for employer letters set forth in 8 C.F.R. § 245a.2(d)(3)(i), however, because it was not prepared in sworn affidavit form, does not identify the applicant's address during her time of employment, does not describe the applicant's duties in detail, and does not state exactly when the employment began. Since January 1, 1982 is the salient date in this application, a general statement ten years later that the applicant's employment began in "1981" is not precise enough to establish that it began before January 1, 1982.

Accordingly, the AAO concurs with the director's determination that the applicant has failed to establish that she resided in the United States in an unlawful status before January 1, 1982. Nor has the applicant overcome the director's finding that the affidavits and other documentation submitted by the applicant are insufficiently probative and contain too much conflicting information to establish the applicant's continuous residence in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

Thus, the applicant has failed to establish her eligibility for permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The appeal will therefore be dismissed.

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