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]

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FILE: [redacted] Office: LOS ANGELES Date: MAY 22 2008

MSC 03 246 61462

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: SELF-REPRESENTED

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 application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Los Angeles, and is now before the Administrative Appeals Office (AAO) 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, the applicant asserts that he provided evidence in support of his eligibility and made consistent statements to the service with regard to his initial entry into the United States and his continuous unlawful residence therein during the requisite period. He concludes that the evidence submitted accurately accounts for his presence in the United States, and urges reconsideration of his application. No new evidence is submitted on appeal.

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).

On his form I-687, which he signed under penalty of perjury on March 26, 1991, the applicant claimed the he last came to the United States in March 1981. He listed his addresses in the United States during the requisite period as the following:

March 1981 to March 1985: [redacted]
March 1985 to May 1987:
May 1987 to Present:

Regarding his employment history, the applicant listed the following in section 36 of Form I-687:

1981 to 1984: [redacted], Mechanic
1984 to Present: Self-Employed, Photographer

In support of his presence in the United States during the requisite period, the applicant submitted the following documents:

1. Letter dated September 1, 1990 from [redacted] of Guadalajara Shoes, claiming that the applicant worked with the company part time as a photograph man from 1981 to present.
2. Affidavit dated June 8, 2006 by [redacted], claiming that he knows for a fact that the applicant arrived in the United States in March 1981. He claims that at that time, they shared the rent of an apartment located at [redacted], Los Angeles, CA 90022.
3. Second affidavit dated May 28, 2003 by [redacted], claiming that he knows that the applicant resided at [redacted], Los Angeles, CA 90022 from March 1981 to December 1985, claiming that the applicant lived with him and all bills were in his name.
4. Affidavit dated June 2, 2003 by [redacted] claiming that he has personal knowledge that the applicant resided at [redacted], Los Angeles, CA 90002 from May 5, 1987 to the present. He further claims that the applicant is a nice person.

In the Notice of Intent to Deny (NOID), dated July 15, 2006, the director stated that the applicant failed to submit evidence demonstrating his continuous unlawful residence in the United States during the requisite period. Specifically, the director noted that the letter from [redacted] appeared to list the applicant's address at the time of his employment for the company as [redacted] an address that, according to his Form I-687, he did not live at during the time of his employment. The director requested clarification of this point, and further pointed out that the remaining evidence in the record was insufficient to establish his eligibility. The director granted the applicant thirty (30) days to submit additional evidence.

The applicant responded on August 9, 2006. In the response, the applicant first denied ever filing a Form I-687. Second, he contended that the director's conclusions regarding the statement of address in the

letter from Guadalajara shoes was incorrect. In the Notice of Decision, dated August 17, 2006, the director denied the instant application based on the reasons stated in the NOID.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. The applicant submitted three affidavits, two of which were from the same person, and one employment letter, to support his Form I-485 application. Here, the applicant has failed to meet this burden.

Upon review, the AAO agrees with the applicant's contention that the director drew erroneous conclusions regarding the address listed by Guadalajara Shoes in its September 1, 1990 letter. Pursuant to 8 C.F.R. § 245a.2(d)(3)(i), letters from employers should provide the applicant's address at the time of employment. It appears that the director incorrectly concluded that the employer was providing the applicant's address during his initial employment with the company, rather than his current address. Nowhere in the letter does the signator state that the address provided is the applicant's former address. In fact, the letter indicates that the applicant still works for the company, so the address listed refers to the applicant's current address, which is corroborated by the claims on his Form I-687. Consequently, the director's comment with regard t this issue is withdrawn.

However, this letter is insufficient to meet the applicant's burden of proof in these proceedings. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) requires employers to declare whether the information they provided was taken from official company records, and also requires them to identify the location of such records and state whether such records are accessible. In the alternative, they must state the reason why such records are unavailable. While it appears that the applicant was working as an independent contractor and not an employee of the company, the issue is technically irrelevant. However, it should be noted that on Form I-687, the applicant did not claim to begin working as a photographer until 1984; however, Guadalajara Shoes claims he worked for them in this capacity since 1981. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In addition, the applicant provides two affidavits from [redacted], claiming that he knows the applicant entered the United States in March 1981 because the applicant moved into his apartment in March 1981 and stayed there until December 1985. There are two discrepancies between the statements of [redacted] and the claims of the applicant on Form I-687. The applicant claims that he resided at [redacted]d. from March 1981 to March 1985, whereas [redacted] claims the applicant stayed there until December 1985. In addition, [redacted] does not provide the apartment number for the residence, and also provides a different zip code (90011) than the zip code provided by the applicant (90022). It should also be noted that the affidavit of [redacted] who also claims to have known the applicant at this same address, provides a third zip code (90002), but claims that he knows the applicant to reside at 2603 Compton from May 5, 1987 to the present. These unresolved discrepancies raise additional questions regarding the validity of the claims contained therein and the evidence in its entirety. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the

record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. *See* 8 C.F.R. § 245a.2(d)(3)(v). The affidavits of [redacted] identifies the applicant by name, provides the means by which the affiant may be contacted, and provides the applicant's address history for 1981 to 1985. The affidavit of [redacted] identifies the applicant by name, provides the means by which the affiant may be contacted, and provides a conflicting address history for the applicant from 1987 to present. No additional information is provided.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification.

Given the applicant's reliance upon documents with minimal probative value, and his failure to supplement the record with probative evidence when afforded the opportunity, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

It is further noted that on or about July 9, 1994, the Los Angeles Police Department arrested the applicant and charged him with the following:

COUNT 01:	23152(A)	VC MISD – UND INFLNCE ALCHL/DRUG IN VEH.
COUNT 02:	23152(B)	VC MISD - .08% MORE WGHT ALCHL DRIVE VEH.

The record reflects that the applicant pled nolo contendere to Count 02. He was convicted and placed on summary probation for 36 months and ordered to pay a number of fines. (Case No. [redacted] Count 01 was dismissed, and the proceedings in the matter were terminated on April 17, 1995.

This misdemeanor conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

In addition, on November 13, 2001, the applicant was issued a Notice to Appear in the Los Angeles Superior Court for charges related to prostitution. These charges were rejected by the prosecuting attorney and the case was not pursued; therefore, this incident does not have bearing on the outcome of this appeal.

In conclusion, the applicant has failed to establish continuous unlawful residence from before January 1, 1982 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.

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