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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: NEW YORK Date: MAY 30 2008

MSC 02 227 61766

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.

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, New York, New York, 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, counsel for the applicant states that the director's decision is baseless because the applicant entered the United States without a visa and he is not able to provide documentary evidence to prove his entry into the United States.

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 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.

In the Notice of Intent to Deny (NOID), the director stated that the applicant failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that the applicant submitted three affidavits in support of his claim; however, there was no point of contact for the affiants for verification. The director granted the applicant thirty (30) days to submit additional evidence.

The record reflects that the applicant's response to the NOID consisted of a letter from the applicant stating that that he is submitting documents from individuals living in the United States for over 20 years. With his response to the NOID, the applicant submitted affidavits from [redacted], attesting to knowing the applicant since 1981; and three affidavits from [redacted], who also attests to knowing the applicant since 1981. In addition, the applicant submitted identity documents for each of these affiants. No additional evidence was received. In the Notice of Decision, dated July 25, 2006, the director denied the instant application based on the reasons stated in the NOID.

On appeal, the applicant submits letters from [redacted], President, Jalalabad Association of America, Inc., dated March 20, 2004, stating that the applicant has been an active member and serving as a social worker since the establishment of the organization; a letter from All Taxi Management, Inc., dated March 22, 2004 (signed by an unidentifiable individual), stating that the applicant has been a self-employed taxi operator since February 5, 2004; a previously submitted letter from [redacted], who attests to knowing the applicant since 1981; and, a photocopy of the applicant's passport.

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 a letter of employment and affidavits as evidence to support his Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

Employment Letter

The applicant submitted a letter of employment by All Taxi Management, Inc., dated March 22, 2004, stating that the applicant has been a self-employed taxi operator since February 5, 2004. The letter is not probative because it is not clear who signed the letter, and therefore cannot be verified. Also, the letter is not relevant as it does not pertain to the period of residence in question January 1, 1982, through May 4, 1988.

The applicant also submitted a letter of employment, dated January 22, 1987, by [redacted] President of Indian Super Market, located 42-45 Main Street, Flushing, New York, stating that the applicant was employed as a cashier from September 1981 to January 1987. However, [redacted] failed to provide information on the applicant's address at the time of employment, and he does not show periods of layoff, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i). Also, [redacted] failed to specify the date in 1981 when the claimed employment commenced.

Affidavits and Letters

The applicant submitted a letter from [redacted], as Administrative Manager of The Family of Community Banks, dated March 16, 2004, stating that he has known the applicant since August 1981, and that he lived in the same building with the applicant from July 1984 to January 1987; and two affidavits by [redacted] dated January 15, 1990, and July 19, 2006, stating that he has known the applicant since the early part of 1981. [redacted] however, does not state whether the applicant has been a continuous resident of the United States since that time.

In addition, the applicant the submitted a sworn affidavit from [redacted], who attests to knowing the applicant in the United States since 1981. [redacted] also states that has been at various social and cultural gatherings with the applicant, and lived in the same building with the applicant from July 1984 to January 1987. However, [redacted] does not state whether the applicant has been a continuous resident of the United States since that time. Similarly, the affidavits from [redacted] and [redacted], attest to knowing the applicant since 1981. However, these affiants also fail to state whether the applicant has been a continuous resident of the United States since that time.

The applicant also submitted a sworn affidavit, dated July 19, 2006, by who attests to knowing the applicant in the United States since 1981. However, it is noted that although the applicant stated on his Form I-687 that he departed the United States on February 4, 1987 and returned on March 3, 1987, and he indicated on the Form I-687 that he resided in Davie, Florida, from June 1989, [redacted] states that he has met the applicant almost every day of the week, during prayer at a local mosque and at events with friends and relatives. There is no indication that Mr. [redacted] lived in Florida from June 1989. Therefore, it is unlikely that the affiant would see the applicant almost weekly as the affiant claimed. This casts doubt on whether the applicant's claim that he first entered the United States before January 1, 1982, and resided continuously in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988, is true. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and

sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

The applicant also submitted a letter from [redacted], President, Jalalabad Association of America, Inc., dated March 20, 2004, stating that the applicant has been an active member and served as a social worker since the establishment of the organization. [redacted] does not date his acquaintance with the applicant, nor does he state whether the applicant has been a continuous resident of the United States during the requisite period from prior to January 1, 1982, through May 4, 1988. Also, the applicant submitted a letter from [redacted] dated July 18, 2006, stating that he has known the applicant in the United States since 1981. It is noted that the letter lacks probative value because the authenticity of [redacted]s letter cannot be determined as the letter is not notarized.

Although the applicant has submitted letters and affidavits in support of his application, the applicant has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. None of the affiants provided any reasonable detail of how they dated their acquaintance with the applicant, how they met the applicant or how frequently they saw the applicant. 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.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. In addition, although the applicant claims that he has resided in the United States since July 1981, the applicant has not provided any contemporaneous evidence in support of his claim. It is reasonable to expect that the applicant would be able to provide some reliable contemporaneous documentation if he has been in the United States since 1981 as he claims. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence 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.