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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090
MAIL STOP 2090

U.S. Citizenship and Immigration Services

L2

[redacted]

FILE: [redacted] Office: NEW YORK Date: NOV 04 2008

consolidated herein]
MSC 02 247 60649

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. 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.

John D. Vaughan
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 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 grounds that the applicant failed to appear for his LIFE legalization interview and failed to respond to a request for evidence that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal the applicant asserts that he did not receive the director's Notice of Intent to Deny (NOID) and therefore was unable to respond. The applicant requests a reconsideration of the director's decision and submits additional documentation in support of his claim.

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."

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 applicant, a native of Peru who claims to have lived in the United States since July 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on June 4, 2002. At that time the record included the following evidence of the applicant's residence in the United States during the years 1981-1988, which had been submitted with a Form I-687 (application for temporary resident status) in 1990:

- An affidavit from [redacted] a resident of Corona, New York, dated October 14, 1989, stating that he had personal knowledge that the applicant resided at the following addresses: [redacted] from August 1981 to June 1984; [redacted] from May 1984 to February 1988; and [redacted] New York, from February 1988 to the present (1989), and that the applicant is a good friend.

- An affidavit from [redacted] a resident of Jamaica, New York, dated October 18, 1989, stating that the applicant is a good friend of the family and that he had personal knowledge that the applicant resided at the following addresses: [redacted] York from August 1981 to June 1984; [redacted] May 1984 to February 1988; and [redacted] Jamaica, New York, from February 1988 to the present (1989).

- An affidavit from [redacted] a resident of New York City, dated January 16, 1990, stating that the applicant is a good friend in the church, and that he had personal knowledge that the applicant resided at the following addresses: [redacted] from August 1981 to June 1984; [redacted] May 1984 to February 1988; and [redacted] Richmond Hill, Jamaica, New York, from February 1988 to the present (1989).

  An affidavit from [redacted] dated October 18, 1989, stating that the applicant lived at [redacted] New York, from August 1981 to May 1984.

- An affidavit from [redacted], a resident of Astoria, New York, dated October 4, 1989, stating that he was the landlord at [redacted], New York, and that the applicant was a tenant in the building from May 1984 to February 1988.

- **An affidavit from** [redacted] dated January 17, 1990, stating that the applicant resided at [redacted] Hill, Jamaica, New York, from February 1988 to the present (1990).

- A letter of employment from [redacted] Pizza Restaurant, in New York City, dated January 16, 1990, stating that the applicant was employed as a dishwasher from August 1981 to December 1983, at an average weekly salary of $140.00

- An undated letter of employment from [redacted] of Stella del Mare Restaurant in New York City, stating that the applicant was employed as a "saladman" from January 1984 to May 1987, and was paid an average weekly salary of $230.00.

  An affidavit from [redacted], a resident of Jackson Heights, New York, dated May 1, 1990, stating that the applicant left New York on August 20, 1987 for Peru, and returned with some letters and gifts for her family.

- Various merchandise, rental, and money order receipts with handwritten entries, some without the applicant's address, and dates spanning the 1980s.

In a Notice of Intent to Deny (NOID), dated May 5, 2004, the director cited the applicant's failure to appear for his interview scheduled for April 26, 2004. The director granted the applicant a second and final interview, and warned the applicant that failure to appear for the second and final interview would result in the denial of his application for lack of prosecution. The director rescheduled the second and final interview for July 22, 2005. On that date the applicant again failed to appear.

On April 4, 2007, the director issued another NOID, setting forth the continuous residence and physical presence requirements for LIFE legalization, reiterating the applicant's burden of proof, and advising the applicant that because he failed to appear for his second interview on July 22, 2005, his application was denied. The applicant was granted 30 days to submit additional evidence.

The applicant failed to respond to the NOID and on June 2, 2007, the director issued a Notice of Decision, denying the application for the reason(s) cited in the NOID.

On appeal the applicant asserts that he did not receive the director's Notice of Intent to Deny (NOID)[1] and therefore was unable to respond. The applicant requests a reconsideration of the director's decision and submits the following additional documentation in support of his claim to have resided in the United States from before January 1, 1982 through May 4, 1988, as required for LIFE legalization:

- Three copies of earnings statements from [redacted]. in Ridgewood, New York, for the periods ending December 29, 1981, April 6, 1982 and June 22, 1982, identifying the applicant as the employee.

- Two copies of employee's pay statements from [redacted] Corporation in Ridgewood, New York, for the periods ending May 29, 1985 and November 1, 1985, identifying the applicant as the employee.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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 file includes a Record of Deportable Alien (Form I-213), dated June 27, 1989, indicating that the applicant was encountered on that date at the Detroit Metro Airport in an immigration check. The applicant along with other undocumented aliens was transported to the Detroit Border Patrol Station for processing. The applicant stated that he paid $600.00 to an unidentified male in Tijuana to be smuggled into the United States on June 23, 1989. The applicant stated that he was taken to Los Angeles, California, where he was given a plane ticket to New York City. The Form I-213 indicated that the applicant had been illegally in the country "4-30" days. The applicant requested and was granted a voluntary return to Peru.

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[1] The applicant was correct in his assertion that he did not receive a NOID dated July 8, 2006, because no such document was found in the file. The applicant evidently did receive the NOID dated April 4, 2007, however, in which the director reiterated the continuous residence and physical presence requirements for LIFE legalization, notified the applicant of the consequences of his failure to appear for his interview, and granted him the opportunity to provide additional documentation.

Also in the file are two Forms I-687 (Application for Status as a Temporary Resident), which the applicant filed on January 18, 1990, and June 15, 2001. On the Form I-687 filed in 1990, the applicant listed the following residential addresses and employers during the 1980s:

Residences:

- [redacted] New York, from August 1981 to May 1984;
- [redacted] ork, from May 1984 to February 1988;
- [redacted] l, Jamaica, New York, from February 1988 to the present (1990).

Employers:

- Gino's Pizza Restaurant, from August 1981 to December 1983;
  Stella Del Mare, from January 1984 to May 1987;
  "Works Personal," from May 1987 to August 1989.

On the Form I-687 filed in 2001, the applicant listed the following residential addresses and employers during the 1980s:

Residences:

- [redacted] Hills, New York, from 1981 to 1988;
- [redacted] Hills, New York, from 1988 to March 2000.

Employer:

- "Restaurant Working" (no name or address of employer listed), from 1981 to 1989.

The AAO notes that the residential and employment information on the two Forms I-687 is contradictory and that the employment information submitted on appeal contradicts both of the forms. This inconsistent information concerning the applicant's residential addresses and employers in the United States casts doubt on the applicant's claim that he resided continuously in the United States from July 1981 through May 4, 1988. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

The letters of employment from [redacted] dated January 16, 1990, and from [redacted] (undated) do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they do not identify the applicant's address at the time of employment, do not indicate whether

the information about the applicant's employment was taken from the company records, and do not indicate whether such records are available for review. The letters were not supplemented by earnings statements, pay stubs, tax records or other documentation demonstrating that the applicant was employed during any of the years claimed. For the reasons discussed above, the AAO determines that the employment letters are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The affidavits by [redacted] and [redacted] have minimalist or fill-in-the-blank formats with little personal input by the affiants. The affiants all claim to have known the applicant since the 1980s, and provide some basic information about the applicant, such as the addresses he claims in the United States during the 1980s, but very few details about the applicant's life in the United States, such as where he worked and his interaction with the affiants over the years. The addresses identified by the affiants accord with the information provided by the applicant on his first Form I-687 filed in 1990, but conflicts with the information provided by the applicant on his second Form I-687 filed in 2001. Furthermore, the affidavits are not accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

As for the affidavit by [redacted] it has no probative value as evidence of the applicant's residence in the United States from before January 1, 1982 through May 4, 1988, because Ms. [redacted] only indicated knowledge of the applicant's trip to Peru in August 1987, and provided no other information about the applicant. [redacted] did not indicate when the applicant returned to the United States in 1987 or thereafter, and provided no information whatsoever about the applicant's life in the United States prior to the August 1987 trip to Peru.

The photocopied employee's pay statements from [redacted] and earnings statements from Restivo Brothers Bakers, Inc. appear to be fraudulent. The applicant did not list these two companies as employers during the 1980s on either of his Form I-687s, filed in 1990 and 2001. The name of the applicant on the statement from [redacted] Corporation appears to have been inserted after-the-fact because the font is different from the other printed information on the document, and the position of the applicant's name on the March 29, 1985 document is not consistent with the document issued on November 1, 1985. For the reasons discussed above, the pay and earnings statements have little or no probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The various rental, merchandise, and money order receipts, bearing dates from 1981 to 1988, are all handwritten with no stamps or other official markings to authenticate the dates they were written. Some of the receipts do not identify the applicant's address. Given these substantive

deficiencies, and the general lack of credibility the applicant has shown in other documentary submissions, the AAO concludes the receipts are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO determines that the applicant has failed to establish 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, as required under section 1104(c)(2)(B)(i) of the LIFE Act. Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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