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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

L2

[redacted]

FILE: [redacted] Office: NEW YORK Date: NOV 20 2008

MSC 02 066 61055

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. 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 F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, the applicant asserts that he has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988.

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. Section 1104(c)(2)(B)(i) of the LIFE Act; 8 C.F.R. § 245a.11(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. 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 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. Here, the applicant has failed to meet this burden.

The applicant claimed to have entered the United States in October 1978 at John F. Kennedy International Airport with a nonimmigrant visitor visa. In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- A photocopy of page one of a lease agreement entered into on October 1, 1981 for rental property at [redacted], Hollywood, California.
- An affidavit from [redacted] of [redacted] who indicated that he had known the applicant since 1981. The affiant asserted, "[a]lthough diligent records were not always kept at the studio for these types of employees, my memory is good and I am willing to swear under penalty of perjury in any fashion necessary."
- Several photocopied pay stubs from [redacted] and rent receipts dated from 1981 to 1988.
- An affidavit signed by [redacted], who attested to the applicant's residence from October 1981 to March 1986 at [redacted], Hollywood, California and from March 1986 to January 1989 at [redacted], Montebello, California. The affiant asserted that the applicant has been an active member of his church since 1978.
- Two envelopes postmarked in 1980 and 1981 and addressed to the applicant at [redacted], Los Angeles, California.

The applicant also submitted a postmarked envelope addressed to the residence at [redacted]; however, it lacks probative value as the postmark is indecipherable.

On July 19, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted appeared to be neither credible nor amenable to verification and that no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified in their respective affidavits. The applicant was also advised that he had failed to submit evidence of his October 1978 entry as a B-2 visitor and that Citizenship and Immigration Services (CIS) records did not reflect this entry.

The applicant, in response, indicated that he could not provide his passport because "during my second unlawful entry the broker took that passport." Regarding the affidavits, the applicant indicated the affidavits were submitted in 1990 at the time he applied for legalization and "I cannot get access to these individuals now as I am not aware of their current whereabouts." The applicant requested that the director consider the lease agreement, rent receipts, postmarked envelopes and employment records that have been submitted. The applicant submitted copies of the envelopes previously provided along with the following:

- An affidavit from who indicated that he met the applicant in September 1981 at Bengal Tiger Restaurant in Hollywood, California. The affiant indicated that he and the applicant met at community gathering, mosque and religious activities. The affiant indicated that he met the applicant again when he moved to New York in August 1987.
- An affidavit from [redacted], who indicated that he first met the applicant at Shaheen Restaurant in Jackson Heights in March 1981.

- **An affidavit from** [redacted] who indicated that he first met the applicant at Flora General Store in Jamaica, New York, in March 1981 at the time the applicant was visiting from California.

The director considered the affidavits submitted by the three affiants and determined that the affidavits appeared to be neither credible nor amenable to verification and that no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified in their respective affidavits. The director also determined that the envelope postmarked in 1980 appears to have been altered and, therefore, has no probative value. The director concluded that the applicant had not submitted sufficient evidence to establish his claimed residence in the United States during the requisite period.

The statements issued by the applicant have been considered. The AAO does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States since before January 1, 1982, through May 4, 1988, as he has presented contradictory and inconsistent documents, which undermines his credibility.

On appeal, the applicant asserts that he submitted "original not a copy" of his lease agreement, rent receipts, pay stubs and postmarked envelopes.

The applicant's assertion is not supported by the record. Except for the three affidavits submitted in response to the Notice of Intent to Deny, none of the documents provided were in their original format.

The lease agreement has no probative value as it was not accompanied by the signature page, which would reflect that the lease had been executed and in effect for the claimed time period. The rent receipts also lack probative value as: 1) the first three months indicate that $145.00 was paid for the leased premises; however, the lease agreement indicates that the rent was for $150.00; and 2) the rent receipt dated November 1, 1981 indicates that it covers the one-month period of "November to October" of 1981; and 3) the signatures on the receipts are indecipherable, thereby giving rise to questions regarding whether the signature is that of a person who was authorized and affiliated with the lessee of the leased premises.

The **employment affidavit from** [redacted] failed to include the applicant's address at the time of employment and provide the applicant's duties with the company as required under 8 C.F.R. § 245a.2(d)(3)(i). The information provided by the affiant was primarily based on his memory.

[redacted] based his knowledge of the applicant's residences in the United States because the applicant had been a member of his church since 1978. [redacted], in his affidavit, attested to having known the applicant since September 1981, and that he would often meet with the applicant at a mosque and at other religious activities. However, the applicant, on his Form I-687 application signed March 9, 1990, did not indicate that he was affiliated with any religious organization during the requisite period.

[redacted] and [redacted] in their affidavit, attested to having known the applicant since March 1981, but provided no details regarding the nature of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence since they resided in New York while the applicant was purportedly residing in California until 1990. 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.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant 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.