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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FILE: [redacted] Office: NEW YORK Date: OCT 03 2008

MSC 02 211 64394

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.

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, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988, and because the applicant had been absent for a period which disrupted his continuous unlawful residence. The director noted an inconsistency in the applicant's testimony and application.

On appeal counsel for the applicant asserts the director failed to properly consider the evidence and erred in his decision, but fails to submit any additional evidence.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. 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).

An applicant must establish eligibility by a preponderance of the evidence. 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 petitioner 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 petitioner 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 or petition.

Citizenship and Immigration Services (CIS) regulations provide an illustrative list of contemporaneous documents that an applicant may submit to establish presence during the required period. 8 C.F.R. § 245a.15(b)(1); *see also* 8 C.F.R. § 245a.2(d)(3)(vi)(L). Such evidence

may include employment records, tax records, utility bills, school records, hospital or medical records, or attestations by churches, unions, or other organizations so long as certain information is included. The regulations also permit the submission of affidavits and any other relevant document, but applications submitted with unverifiable documentation may be denied. Documentation that does not cover the required period is not relevant to a determination of the alien's presence during the required period and will not be considered or accorded any evidentiary weight in these proceedings.

On July 26, 2007, the director sent the applicant a Notice of Intent to Deny (NOID), which stated that the evidence submitted by the applicant was insufficiently probative of continuous unlawful residence in the U.S. from prior to January 1, 1982 through May 4, 1988, and continuous physical presence in the U.S. from November 6, 1986 through May 4, 1988.

The applicant responded on August 22, 2007.

On September 1, 2007, the director denied the application because the applicant had failed to establish his continuous unlawful presence during the required period.

On appeal the applicant asks that CIS reconsider his application.

The director was incorrect in his assertion that an absence of 34 days breaks a chain of continuous unlawful residence. However, this is moot as the applicant has failed to establish that he arrived in the United States prior to January 1, 1982, and continuously resided thereafter in an unlawful status for the required period.

Relevant to the period in question the record contains the following evidence:

(1) Copy of a letter, signed by [redacted], asserting the applicant lived with him at [redacted], Lake Ronkonkona, New York, from December 1981 to October 1988.
(2) Copy of a letter, signed by [redacted], asserting the applicant lived with him in Queens, New York from December 1981 to 1985, and at [redacted], Lake Ronkonkona, New York, from 1985 to October 1988.
(3) Copy of a letter, signed by [redacted], asserting the applicant lived at Lake Ronkonkona, New York, from 1986 to October 1988.

As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation. The minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.12(e).

Documents which generically assert an affiant has known an applicant since a particular year are not sufficiently probative to support assertions of eligibility. In this case the documents provided list inconsistent areas of residence for the applicant, are generic in nature and fail to fully explain how the affiants came to know the applicant and what the nature of the relationships were. This is especially ironic because an examination of the handwriting on the documents listed at Nos. 1

– 3 and the applicant's I-687 reveal that the letters were actually apparently hand-written by the applicant, and not by the affiants themselves. The AAO rejects these affidavits as authentic evidence. Further, the documents and affidavits submitted are internally inconsistent, generic in nature, and lack credibility.

Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). 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. *Id.*

Counsel for the applicant makes numerous conclusory assertions which are irrelevant to these proceedings, and fails to reference the regulations at 8 C.F.R. 245a subpart B which govern the requirements for these proceedings. As an example counsel cites Black's Law Dictionary in reference to the term 'affidavit', despite the fact that pertinent regulations define what is acceptable as evidence for these proceedings. Counsel also cites the Federal Rules of Evidence, which do not apply to these proceedings (if they did affidavits, would not be an acceptable form of evidence as they constitute hearsay and could not be accepted for the truth of the matter asserted therein). Counsel's assertions are incorrect as a matter of law and bear no legal merit on these proceedings.

When viewed in its totality the record does not support eligibility. The applicant has failed to adequately detail and corroborate his entry into the United States prior to January 1, 1982, and subsequent unlawful residence thereafter through May 4, 1988. The record consists entirely of affidavits which are internally inconsistent and generic in nature. On appeal, counsel discusses an absurd distinction of 'credible affidavit' and fails to reference the regulations which govern LIFE Act requirements and acceptable evidence. The unsupported or irrelevant assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). These assertions fail to carry the applicant's burden of establishing eligibility.

The discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the applicant's eligibility is not credible. Accordingly, the applicant has not established the eligibility and the appeal will be dismissed.

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