U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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

MSC 02 001 62162

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.

On appeal the applicant asks that CIS reconsider his application.

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 April 24, 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 did not respond.

On June 2, 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 applicant has submitted some documentation which does not cover the required period, and is not relevant to these proceedings.

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

(1) Statement from [redacted] asserting he met the applicant in 1987 when they were roommates.
(2) Statement from [redacted] asserting he has known the applicant since early 1988.
(3) Statement from [redacted] asserting the applicant has been living in the United States since 1981 because he saw the applicant at a gas station on Coney Island.
(4) Statement from [redacted] asserting he has known the applicant since 1987.
(5) Statement from [redacted] that the applicant made a donation to the Anjuman-Hefazatul-Islam in December of 1987.

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).

The applicant has not submitted any primary evidence, and relies entirely on affidavits to establish eligibility for the required period. However, documents which generically assert an affiant has known an applicant since a particular year are not sufficiently probative to support assertions of eligibility. Casual acquaintance with an applicant such as meeting someone at a party, seeing them in church, or seeing them at a gas station, is not sufficient to demonstrate that such affiant has actual direct knowledge of the facts to which they are testifying (arrival before a certain date, continuous residence, etc.). Affidavits which lack probative details are not sufficiently credible to warrant significant evidentiary weight. Such casual knowledge of an applicant lacks the context to be sufficiently probative such that CIS can make an informed

determination that the applicant has been residing continuously in an unlawful status for the duration of the required period. In this case each of the affiants state they have been in the United States since after 1984 or 1985, and thus did not have actual, direct knowledge of the applicant's continuous unlawful residence in the United States.

In this case there are some inconsistencies which render the applicant's assertions implausible. Primarily, the applicant asserts he has 4 children, but has only listed the birthdates for three of them, asserting that both a boy and girl were born in May of 1988, and another child in 1989. He has listed one absence in August 1987, but has at various times claimed he was only absent for a few days, and at other times claimed he was absent from the United States until September 8, 1987. In addition, the applicant listed on his I-687, Application for Adjustment to Temporary Status, a residence in Chicago, Illinois from August 1989 until May 1991, yet no mention of this address is made on his I-485 or G-325 Biographical Questionnaire. In addition, the record contains a copy of a passport issued to the applicant on September 12, 1989, in New York. Thus, it is unclear if the applicant actually lived in Chicago, for how long, and why he would not be consistent in listing his whereabouts during the required period.

The general lack of detail concerning the applicant's whereabouts and activities during the required period reflects poorly on his assertions of continuous unlawful residence and presence. The applicant has alleged a minimal body of facts in an attempt to satisfy the criteria for legalization, leaving CIS with no context in which to verify or corroborate his assertions. Without the context in which to view the applicant's assertions they appear isolated factually, do not present an overall picture of the applicant's residence and presence, are not corroborated by other assertions contained in the record, and are not amenable to verification. Portions of his story appear implausible, and are not clarified by evidence contained in the record. When the facts asserted in the record are viewed in their totality with the evidence presented they are not sufficiently supported to establish 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.