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

U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: [redacted] Office: NEW YORK Date:
MSC 01 338 60314

OCT 30 2008

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: On July 11, 2007, the Director, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant failed to submit credible evidence to meet the continuous residence requirements under the LIFE Act. The director noted that the applicant failed to provide evidence of his entry into the United States. The director further noted that the affidavits the applicant submitted were neither credible nor amenable to verification.

On appeal, counsel for the applicant asserts that the applicant's testimony and documentation were sufficient for the director to approve the case, that the director's decision was arbitrary considering the peculiar circumstances of the case, and denial of the application was an abuse of discretion.

An applicant for permanent resident status under section 1104 of the LIFE Act 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. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite period, 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 states 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of

continuous residence in the United States in an unlawful status prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). See 8 C.F.R. § 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight that fill-in-the-blank affidavits providing generic information.

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 meet his burden, establishing by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true. Upon examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. *See* 8 C.F.R. § 245a.14. In this case, the record reflects that the applicant applied for such class membership by submitting a "Form for Determination of Class Membership in CSS v. Meese [CSS lawsuit]," accompanied by a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)" dated February 2, 1989.

On September 3, 2001, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On February 9, 2004, the applicant appeared for an interview based on the application.

The applicant has provided the following evidence relating to the requisite period:

- A handwritten letter notarized on June 19, 2007, from [redacted] Ms. [redacted] states that she has been friends with the applicant since December 12, 1981. She states that this was about one and a half years after he moved to the Bronx. She states that they have remained very close friends being that they came from the same country. While [redacted] provides the applicant's current address, she does not provide the addresses where the applicant was living at the time that they first met and where he lived subsequently. Ms. [redacted] does not indicate personal knowledge of the applicant's entry into the United States, and does not explain

how, where, when, or under what circumstances she met the applicant. While she states that she and the applicant are very close, [redacted] does not provide details that would indicate personal knowledge of the applicant's place of residence or details about the circumstances of his residence in the United States during the statutory period. Lacking such relevant details, this affidavit can be given minimal weight as evidence of the applicant's continuous residence during the requisite period;

- A letter dated March 21, 2002, signed by [redacted]. Dr. [redacted] states that the applicant was initially examined and treated for viral syndrome on January 10, 1983. He states that the applicant was seen on June 16, 1983 for acute gastroenteritis with moderate dehydration which needed IV fluids to correct the electrolyte imbalance. He states that the applicant was subsequently seen for minor medical problems. He states that the applicant is not on any chronic medications and has been in good health since his first visit to the clinic. He states that the applicant was last seen on January 2, 2002. Dr. [redacted] **does not** indicate which records were consulted in order to write the letter. Furthermore, the letter is not supported by copies of contemporaneous records. Finally, Dr. [redacted] does not indicate the applicant's stated address in 1983. Given this lack of detail the letter can be given minimal weight as evidence of the applicant's continuous residence or physical presence in the United States during the requisite period;

- A letter dated February 11, 2002, signed by [redacted], general secretary of the Yankasa Association of USA, Inc. Mr. [redacted] asserts that the applicant has been a member of the organization since 1981. This letter can be given little evidentiary weight and has little probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the letter does not explain the origin of the information given, nor does it provide the address where the applicant resided during the period of his involvement with the association. Furthermore, the letter does not state the frequency of the contact the applicant had with the association or the activities, in any, he participated in or attended;

- A fill-in-the blank employment verification letter dated March 21, 2002, signed by [redacted], president of EKQ Cleaning Services. Mr. [redacted] indicates that the applicant worked from November 10, 1983, to March 27, 1985 and that the applicant's annual salary was $15,000. This letter can be given little evidentiary weight because it lacks sufficient detail and information required by the regulations. Specifically, the employer failed to provide the applicant's address at the time of his employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the employer also failed to declare which records the information was taken from, to identify the location

of such records, and to state whether such records are accessible, or, in the alternative state the reason why such records are unavailable;

- Two "Affidavit of Witness" forms, sworn to in August 2001, and signed by [redacted] and [redacted]. The form indicates that the affiant has personal knowledge that the applicant has resided in the United States in the Bronx from either June 1980 of February 1981 to December 1993. The form allows the affiant to fill in a statement that he or she "is able to determine the date of the beginning of his or her acquaintance with the applicant in the United States from the following fact(s): ____." [redacted] added: "Through Ghanian meetings and social gatherings." [redacted] added: "through Fridays prayers." This affidavit, prepared on a fill-in-the-blank form, contains no details regarding any relationship with the applicant during the requisite period. Mr. [redacted] fails to indicate any personal knowledge of the applicant's claimed entry to the United States or of the circumstances of his residence other than the city where he resided;

  These affidavits, prepared on duplicate fill-in-the-blank forms, contain no details regarding any relationship with the applicant during the requisite period and fail to even state when or where the affiants and the applicant met. Although the affiants include the applicant's 1981 address, they fail to indicate any personal knowledge of the applicant's claimed entry to the United States during that year or of the circumstances of his residence other than his addresses. There is no evidence that the affiants resided in the United States during the requisite period and no details of any relationship that would lend credibility to their statements.

- An "Affidavit of Witness" form, sworn to on August 12, 1988, and signed by [redacted]. The form indicates that the affiant has personal knowledge that the applicant has resided in the United States from one date to another. Mr. [redacted] left that part blank. The form allows the affiant to fill in a statement that he or she "is able to determine the date of the beginning of his or her acquaintance with the applicant in the United States from the following fact(s): ____." Mr. [redacted] added nothing and left that part of the form blank. This affidavit, prepared on a fill-in-the-blank form, contains no details regarding any relationship with the applicant during the requisite period. Mr. [redacted] fails to indicate any personal knowledge of the applicant's claimed entry to the United States or of the circumstances of his residence, not even the city where he resided;

- A fill-in-the-blank affidavit notarized on May 19, 1988, from [redacted] indicating that she has known the applicant since approximately July 22, 1987, because she was the payroll supervisor for C& R MDSE, Ltd., the applicant's employer. She states that the applicant was also known as [redacted]. She indicates that she knows this based on the fact that the applicant "presented his

birth certificate with his real name affixed thereon." This letter can be given little evidentiary weight because it lacks sufficient detail and information required by the regulations. Specifically, [redacted] failed to provide the applicant's address at the time of his employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the employer also failed to declare which records the information was taken from, to identify the location of such records, and to state whether such records are accessible, or, in the alternative state the reason why such records are unavailable; and,

- A letter notarized on June 6, 1988, from [redacted]. Mr. states that the applicant lived with him in his apartment from July 1980 to the date of the letter. Although the address provided is consistent with information provided on the applicant's Form I-687, Mr. [redacted] fails to submit corroborating evidence of the applicant's residence in this apartment or evidence of his own residence in that apartment. Mr. [redacted] does not indicate personal knowledge of the applicant's entry into the United States, and does not explain how, where, when, or under what circumstances he met the applicant. While he states that he and the applicant lived together for eight years, he does not provide details that would indicate personal knowledge of the applicant's place of residence or details about the circumstances of his residence in the United States during this time. Lacking such relevant details, this affidavit can be given minimal weight as evidence of the applicant's continuous residence during the requisite period;

For the reasons noted above, these documents can be given little evidentiary weight and are of little probative value as evidence of the applicant's residence and presence in the United States for 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.

The record of proceedings contains other documents, including a letter from the Service Employees International Union and a fill-in-the blank affidavit from [redacted]. This evidence is dated after or refers to events that occurred after May 4, 1988, and does not address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have first entered the United States without inspection in July 1980, and to have resided for the duration of the requisite period in New York. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence he entered into the United States before January 1, 1982, and that he resided continuously in an unlawful status for the requisite period.

Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance primarily on letters and affidavits, which lack relevant details, and the lack of any probative evidence of his entry and residence in the United States from prior to January 1, 1982 through May 4, 1988, the applicant has failed to establish by a preponderance of the evidence that he maintained continuous, unlawful residence in the United States as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.