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 31 2008

MSC-02-005-61858

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 [or Records] 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.

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 Field Office 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 he found the evidence submitted with the application was insufficient to establish eligibility 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. Section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). Specifically, the director noted that the applicant had not submitted sufficient evidence of his continuous residency for the requisite period and that he had provided affidavits that lacked probative value. The director denied the case, noting that the applicant's testimony and all supporting affidavits were insufficient to establish eligibility for the benefit sought.

On appeal, the applicant indicates that there was an error made with his application. He asserts,

> My case was denied based upon another person's testimony/interview other than myself. In the Notice of Intent to Deny, dated October 24, 2007, from page 2 to page 5 were inserted from another person's case. (ref: [redacted] . . . therefore, I am requesting to reconsider my case based on my testimony/documents and approve my case. Also, I like mention again that a fire broke out in my apartment building on March 1, 1999 that destroyed almost all of my documents pertaining to my continuous stay in USA. I have enclosed a copy of the Fire Department's Report."

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). In this case, the AAO has conducted a de novo review of the application.

Following *de novo* review, the AAO finds that on October 24, 2007 the District Director in New York issued a Notice of Intent to Deny (NOID) the application. There was an error made with this notice and, as the applicant noted on appeal, the second and subsequent pages of the NOID referred to a different applicant. Accordingly, on July 14, 2008, the AAO issued a second NOID to give the applicant an opportunity to respond to the findings of the Service regarding the instant application. The applicant failed to respond to the second NOID, therefore, the appeal will be dismissed.

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. Section 1104(c)(2)(B) of the LIFE Act and 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 under the provisions of section 212(a) of the Act, 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).

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. 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 "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.

In support of his claim of continuous residence in the United States from prior to January 1, 1982, the applicant has submitted the following evidence:

- A letter from dated April 11, 2002. In this letter, the physician indicated that the applicant had been a patient of his since 1985. He provided no additional proof of the applicant's continuous residence in the United States. This letter does not comport with 8 C.F.R § 245a.2 (D)(3)(iv) which requires that hospital or medical records must show the name of the medical facility and include the exact dates of treatment. It is

impossible to discern from the physician's letter how often the applicant was treated, the address where he resided while he was under the physician's care, or any other information which would support the applicant's claims of continuous residency.

- A letter signed by [redacted] who indicates that he is the Prelate and Senior Pastor for The Cathedral – Agape Christian Fellowship in Brooklyn, New York. In this letter, Mr. [redacted] states, "We were introduced in December of 1981 through mutual acquaintances and have since had interaction in connection with various ecclesiastical and ecumenical endeavors." This letter does not conform to the statutory requirements for attestations by churches, unions, or other organizations, which is found at 8 C.F.R. § 245a.2(d)(3)(v). That regulation requires such attestations to "show the inclusive dates of membership and state the address where the applicant resided during the membership period." Mr. [redacted] does not provide dates of the applicant's membership or any other information that is probative of the issue of his initial entrance to the United States prior to January 1981 or his continuous residence for the duration of the statutory period.

- An affidavit from [redacted] who indicated that the applicant was one of his tenants at [redacted] in the Bronx from July 1986 until July 1990. He provided no further information regarding the applicant's continuous residency in the United States.

- A letter from [redacted] who indicated that he met the applicant in "approximately July of 1982." He further explains that he hired the applicant on several occasions to paint his residence. He offers no additional information related to the applicant's continuous residence.

- A Social Security Statement which lists the applicant's earnings for the years 1992 until 1999.

- A letter from [redacted], dated June 1990. The declarant indicated that he has known the applicant for the past four years. He offers no additional information.

- A letter from [redacted] of S&S Construction. Mr. [redacted] indicates that the applicant worked for him as a painter from July 1983 until June 1990 on a part-time basis, "whenever I needed his service." The affiant indicated that the applicant was not a regular employee and he was paid in cash. This affidavit fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of

perjury and shall state the employer's willingness to come forward and give testimony if requested. The statement by [redacted] does not include much of the required information and can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

- Finally, a letter from dated June 1990. The declarant indicated that she has known the applicant since 1981 when he did alterations in her apartment. She does not indicate how she dates their acquaintance, how frequently she saw the applicant during the requisite period, his address during the requisite period, or any other relevant information which would lend credence to her statements.

As described above, the evidence submitted lacks sufficient detail to establish the applicant's continuous residency for the duration of the requisite period. The absence of sufficiently detailed and credible supporting documentation seriously undermines the credibility of his claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. 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.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

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 this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), 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 upon affidavits with minimal probative value, and his own inconsistent statements on his Forms I-687, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--, supra*. The applicant is, therefore, ineligible for Temporary Resident Status under section 245A of the Act on this basis.

According to a New York City Criminal Court certificate of disposition in the record, the applicant pled guilty to a violation of Section 240.20 of the New York Criminal code on March 14, 1997. This single conviction does not render this applicant ineligible for adjustment of status under the LIFE Act.

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