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: PHOENIX Date: SEP 26 2008

MSC 02 352 60859

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 November 8, 2006, the District Director, Phoenix, Arizona, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant failed to submit credible documents to establish, by a preponderance of the evidence, that he took up residence in the United States prior to January 1, 1982, and that he resided continuously here in an unlawful status from January 1, 1982, through May 4, 1988. The director noted that, in 1988, when the Immigration and Naturalization Service apprehended the applicant at entry, the applicant claimed he began residing in the United States in 1985.

On appeal, counsel for the applicant asserts that all the documentation that proved the applicant's residence during the statutory period was lost during Hurricane Andrew in 1992. Counsel asserts that affidavits submitted by the applicant, especially the second affidavit from David Figueroa, are sufficiently detailed to meet his burden of proof.

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.

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 October 17, 1990.

On September 17, 2002, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On May 27, 2004, the applicant appeared for an interview based on the application.

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.

The record contains several contemporaneous documents indicating that the applicant resided in the United States from about July 18, 1985, and thereafter during the requisite period. These documents include a Civilian Identification Card, issued by the Miami Police Department on July 18, 1985; a Florida Driver License issued on July 24, 1985; a receipt for a chauffeur driver license dated February 27, 1987; and an identification card issued on August 26, 1987, by South Dade Community Health Center Outpatient Services. 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 provide sufficient evidence that he entered and resided in the United States before 1985.

Regarding the requisite period before 1985, the applicant has provided the following documents:

Letters and affidavits

- Two letters from [redacted] In a letter dated September 22, 2006, Mr. [redacted] asserts that he first met the applicant in 1981, while he was stationed with the U.S. Air Force in San Antonio, Texas, and visited his mother in Miami. He states that he works for the Postal Service and would not jeopardize his job by making a false or fraudulent statement. He asserts that he remembers it was 1981 when he met the applicant because his daughter was born on [redacted], and it is clear in his mind that he met the applicant when he took his daughter to meet his mother for the first time. This letter, while possibly confirming the applicant's physical presence in the United States in 1981, can be given limited evidentiary weight as evidence of his continuous residence in the United States throughout the requisite period. [redacted] states that when he met the applicant he did not live in Florida and does not indicate any personal knowledge of the circumstances of the applicant's physical presence or residence in the United States at that time, besides the fact that he was a skilled mechanic, or for the rest of the statutory period. While he states that the applicant helped his mother with tasks such as buying groceries and that he was him whenever he visited his mother, he does not indicate the dates or the frequency of these visits. [redacted] does not provide any details that would indicate personal knowledge of the circumstances of the applicant's entry into the United States, his departures from the United States, or where the applicant lived throughout the statutory period.

  In a letter dated May 24, 2004, describes the circumstances under which he met the applicant. states that he returned to Miami in 1982 and that he spent a lot of time with the applicant. He states that they helped each other and worked on the applicant's inventions. He states that they have seen each other's children grow up. He states that the applicant worked as a mobile mechanic from 1981 to about 1993. He states that the applicant worked as a mechanic with Warren Automotive in Miami. He states that he applicant worked as a motorcycle mechanic and that from 1993 on, the applicant became more entrepreneurial. [redacted] states that the applicant sold items, mostly tools, some of which he had reconditioned or rebuilt, at the Swap Shop. He states that in 2001, the applicant sold his home to enable him to work full time on his inventions and that he had recently negotiated a contract for him with a company in Charlotte, North Carolina. He goes on to comment on the applicant's good moral character. states that the applicant worked as a mobile mechanic from 1981 to 1993, but does not indicate what a mobile mechanic does or the locations where the applicant worked. Again, in this letter, [redacted] provides greater detail about the circumstances of the applicant's residence in the

years after the statutory period. While he states that they visited each other's families, he does not provide any address where the applicant lived during the requisite period and does not indicate the frequency of these visits. Again, Mr. [redacted] does not provide details that would indicate personal knowledge of the circumstances of the applicant's entry into the United States, his departures from the United States, or where the applicant lived during the statutory period. This letter can be given partial weight as evidence of the applicant's continuous residence in the United States during the requisite period;

- A letter notarized on August 19, 2004, from [redacted] of Oriskany Falls, New York. [redacted] states that he has known the applicant for the past 22 years. He states that he met his wife through the applicant and that the applicant is an honorable man. He states that the applicant's mechanical skills are excellent and that the two have exchanged some ideas. He states that the applicant has provided mechanic services to friends who have been impressed with his abilities. He states that the applicant has a strong work ethic and is very honest. He states that the applicant has remarkable ideas of machines that could revolutionize the industry and help the environment. While [redacted] states that he has known the applicant for 22 years, he does not indicate when, where, or under what circumstances he met the applicant. He does not indicate whether they first met in the United States or outside the United States. He does not provide any specific details of the circumstances of the applicant's residence in the United States during the statutory period. He does not provide the addresses where the applicant lived and appears to have no personal knowledge of the applicant's entry into the United States;

- A handwritten letter dated May 16, 2004, from [redacted] This letter is not notarized. [redacted] states that he has known the applicant since the early eighties. He states that the applicant is a good and honorable friend and that he served as the family mechanic when he lived in Miami. He states that the applicant has fixed his car and the cars of his family members on several occasions. He states that his rates are fair and his service excellent. Although Mr. [redacted] asserts that he has known the applicant since the early eighties, he does not provide the date when he first met the applicant and does not indicate whether he first met the applicant in the United States or outside the United States. Mr. [redacted] does not provide any personal knowledge of addresses where the applicant has lived during the statutory period or any other details that would indicate knowledge of the circumstances of the applicant's residence in the United States during the required period;

- A letter dated December 18, 2003, from [redacted] owner and president of S & M Auto Body Repairs, Inc. The letter is not notarized. Mr. [redacted] states that he has known the applicant since 1982. He asserts that he

would see the applicant on a weekly, sometimes daily basis. He states that the applicant "has a good character." This letter can be given minimal evidentiary weight as to the applicant's continuous residence. [redacted] does not provide a specific date when, where, or under what circumstances he met the applicant and does not provide any specific details of the circumstances of the applicant's residence in the United States during the statutory period. He does not provide the addresses where the applicant lived and appears to have no personal knowledge of the applicant's entry into the United States; and,

- A letter from [redacted], president and owner of Bud's Paint & Body Shop. The letter is not dated and not notarized. [redacted] states that he has known the applicant since 1981 and provides the applicant's Social Security number. He asserts that the applicant has worked for Bud's Paint & Body several times. While [redacted] states that he has known the applicant since 1981, he does not indicate the date or whether he first met the applicant in the United States or outside of the United States. He provides no information about the circumstances under which he met the applicant. Furthermore, [redacted] provides no details that would indicate that he has any personal knowledge of the applicant's entry into the United States or of the circumstances of the applicant's residence here.

  As employment verification, this letter can be given minimal evidentiary weight because it lacks sufficient detail and information required by the regulations. Specifically, the [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, he also failed to declare which records his 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. In addition, the letter does not list the applicant's position or his duties.

For the reasons noted above, these letters and affidavits are not sufficient to establish the applicant's residence and presence in the United States for the requisite period. Given the limited weight given to the two letters from [redacted] they are not sufficient to meet his burden that he entered the United States prior to January 1, 1982, and resided continuously here from before January 1, 1982, through May 4, 1988. 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. Furthermore, while the applicant has submitted numerous affidavits in support of his application, he has not submitted any credible, contemporaneous evidence to establish his residence prior to 1985. Although his belongings were damaged or destroyed by Hurricane Andrew in 1992, the applicant does not explain why he did not submit

this evidence with his Form I-687 in 1990, when he was asked to submit evidence of residence during the same period.

The AAO notes that the affidavits the applicant submitted can be given minimal evidentiary weight for the additional reason that they contradict information contained in the record. All of the affiants attest to the applicant's residence in the United States prior to 1985. The record indicates that the applicant was detained at Miami International Airport, on May 22, 1988, claiming to be a U.S. citizen. During his interview with an examining officer he stated that he had been living in the United States since 1985. It is incumbent upon the applicant 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has not explained the inconsistencies involving his initial date of entry into the United States and his continuous residence between prior to January 1, 1982 to 1985.

The record of proceedings contains other documents, including the birth certificate of the applicant's U.S. citizen daughter, indicating that she was born on January 2, 1993, in Dade County, Florida; a letter from [redacted], indicating that he has known the applicant since 2002; and, a letter from [redacted] office manager at Motoport, indicating that the applicant worked there from January 10, 1992, to September 15, 1992. These documents all indicate physical presence after May 4, 1988, and do 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 on May 1, 1981, and to have resided for the duration of the requisite period in Miami. 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 on 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