U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEW YORK, NEW YORK Date: APR 02 2009

MSC 01 298 60107

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. If your appeal was dismissed or rejected, all documents have been forwarded to the U.S. Citizenship and Immigration Services National 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and you will be contacted.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the director, New York, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to submit sufficient evidence to establish that he had resided continuously in the United States throughout the statutory period as required under section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant asserted that the record did include sufficient evidence to establish that he had resided continuously in the United States in an unlawful status throughout the entire statutory period.

The AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO's *de novo* review authority. *See,* e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.[1]

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 through May 4, 1988. *See* LIFE Act § 1104(c)(2)(B) 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 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 regulation at 8 C.F.R. § 245a.2(b) provides in pertinent part:

> (b) Eligibility. The following categories of aliens, who are otherwise eligible to apply for legalization, may file for adjustment to temporary residence status:
>
> . . .

[1] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

> (9) An alien who would be otherwise eligible for legalization and who was present in the United States in an unlawful status prior to January 1, 1982, and reentered the United States as a nonimmigrant, such entry being documented on Service Form I-94, Arrival-Departure Record, in order to return to an unrelinquished unlawful residence.
>
> (10) An alien described in paragraph (b)(9) of this section must receive a waiver of the excludable charge 212(a)(19) as an alien who entered the United States by fraud.

The ground of excludability at section 212(a)(19) of the Act has been replaced by the ground of inadmissibility listed at section 212(a)(6)(C)(i) of the Act, as amended.

Section 212(a)(6)(C) of the Act provides in pertinent part:

> Misrepresentation. – (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

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. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The application and other statements of the applicant, both oral and written, are evidence to be considered. *See Matter of E-M-*, 20 I&N Dec. 77 at 79. The applicant's statements must not be the applicant's only evidence used to establish eligibility, but they should be viewed as valid evidence. *Id.*

The absence of contemporaneous evidence is not necessarily fatal to the applicant's claim of continuous residence in the United States during the statutory period. *See id.* at 82-83. Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence. *See id.*

Documentary evidence may be in the format prescribed by U.S. Citizenship and Immigration Services (USCIS) regulations. *See id.* at 80. For example, 8 C.F.R. § 245a.2(d)(3)(i) states that a letter from an employer should be signed by the employer under penalty of perjury and "state the employer's willingness to come forward and give testimony if requested." *Id.* Letters from employers that do not comply with such requirements do not have to be accorded as much weight as letters that do comply. *Id.* However, even if not in compliance with this regulation, a letter from an employer should be considered as a "relevant document" under 8 C.F.R. § 245a.2(d)(3)(iv)(L). *Id.* Also, affidavits that have been properly attested to may be given more weight than a letter or statement. *Id.* Nonetheless in determining the weight of a statement, it should be examined first to determine upon what basis it was made and whether the statement is

internally consistent, plausible and credible. *Id.* What is most important is whether the statement is consistent with the other evidence in the record. *Id.*

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. *Id.* at 79-80. 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.* at 80. 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 or 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 petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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, to deny the application or petition.

On or near April 5, 1990, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On July 25, 2001, he filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The director issued a notice of intent to deny (NOID) in which she indicated that she intended to deny the application because the applicant had not established that he resided continuously in the United States during the statutory period.

According to the director, the record indicates that the applicant made his first entry into the United States on March 31, 1989 as a C1, Crewman at Miami, Florida. She made this finding based on the record of such an entry under the name [redacted] within USCIS' records. The AAO notes that in response the applicant submitted a statement explaining that he had never been to Miami, that his name is a very common name in the region of the world where he was born, and he requested additional information related to this March 31, 1989 entry that he might provide evidence that this entry relates to a different individual. The AAO finds that the March 31, 1989 C1, Crewman entry at Miami to which the director referred in the NOID and in the notice of decision relates to an individual other than the applicant. The record shows that the C1, Crewman named [redacted] listed in this electronic record has a different date of birth than the applicant and that he immediately exited the United States on April 1, 1989, the day following his entry. Any suggestion by the director that on March 31, 1989 the applicant made an entry as a C1, Crewman at Miami is withdrawn.

In the NOID, the director also indicated that the applicant must provide *documentary* evidence of his initial entry into the United States. This point is withdrawn. Contemporaneous, documentary evidence is not in all cases required to establish the applicant's claim of continuous physical presence or continuous residence in the United States beginning prior to January 1, 1982 and throughout the statutory periods. *See Matter of E-M-*, 20 I&N Dec. 77, 82-83 (Comm. 1989). Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence throughout the entire statutory period. *See id.*

The director also suggested that the applicant's claim of having been smuggled into the United States in August 1980 on a truck was undermined by the fact that he could not answer certain questions related to his initial entry posed at the LIFE legalization interview. For example, the record indicates that at this interview, the applicant could not state the name of the individual who drove the truck and the make of the truck on which he was smuggled into the United States in 1980. The director's suggestion that the applicant's failure to provide this information undermines his claim is withdrawn. The AAO finds that the fact that the applicant was not able to provide such obscure details related to his entry, more than twenty years after his claimed entry date, does not undermine his claim that he made this entry.

The director also indicated in the NOID that at the LIFE legalization interview the applicant suggested that he departed the United States during December 1987 and he returned in January 1988. Yet, on the Form I-687, the applicant indicated that he departed in January 1988 and returned in February 1988. This point in the NOID is withdrawn. The LIFE legalization interview notes make clear that it was the District Adjudications Officer, not the applicant, who used December 1987 and January 1988 as the month of departure and the month of return in the midst of eliciting information such as whether the applicant had a Seaman's book with him. Thus, the AAO finds that this does not represent an inconsistency on the applicant's part.

The director also indicated that the credibility of the applicant's affidavits and statements in the record is undermined in that, for example, the individuals who wrote the statements did not include copies of their identity documents or proof that they resided in the United States during the statutory period.

Finally, in the NOID, the director pointed out that the Secretary who signed the Muslim [redacted], Brooklyn, New York letter in the record indicated that the applicant has attended Friday prayers at this mosque since 1982. However, he also stated that over 2000 people attend Friday prayers at [redacted] Brooklyn, New York. The director indicated that the Secretary could not have personal knowledge that the applicant attended Friday prayers each week as there were so many in attendance at these services. The director indicated that this lessened the probative value of the [redacted] statement.

In the rebuttal, the applicant indicated that when he began praying at [redacted] in 1982, it was not yet incorporated; at that time, only the fifteen to twenty Muslims who were members of this mosque gathered to pray in the basement at [redacted] Brooklyn, New

York on Fridays. The applicant stated that the Secretary of the mosque, [redacted] who wrote the letter in the record, knew him and knew all the others who, at that time, attended prayers each Friday, indicating that is how [redacted] had personal knowledge that the applicant attended prayers each Friday. The applicant also explained that in 2005, [redacted] left [redacted] and that he has not been able to locate him that he might confirm the applicant's statements. However, the applicant indicated that, to corroborate his statement, he was able to request an affidavit from [redacted] who attended prayers at this mosque with the applicant beginning in 1982. In the affidavit in the record, [redacted] attested that he has known the applicant since 1982. However, he did not state if he met the applicant in the United States or outside the United States. He attested that he prayed with the applicant at [redacted] in the basement of [redacted], before that mosque was incorporated. However, he did not indicate the period during which he prayed with the applicant at this mosque. He also did not include in his affidavit any statement to support the finding that the applicant resided continuously in the United States throughout the statutory period.

Moreover, the AAO notes that on the Form I-687, the applicant stated under penalty of perjury that in [January] 1989 he relocated to Chicago where he lived until at least April 5, 1990, the date that he was interviewed in Lincoln Square, Illinois regarding the Form I-687. The record indicates that by 1996 the applicant had moved back to New York. However, according to the record, for at least approximately one year and four months during the period in which the [redacted] indicated that the applicant was attending Friday prayers each week in Brooklyn, the applicant was residing in Illinois.

With the rebuttal, the applicant also submitted a copy of [redacted] identity page from an expired passport which establishes that [redacted] made an entry into the United States in 1982 and in 1984. The passport copy indicates that [redacted] was born in Pakistan, but does not indicate what country issued the passport. The applicant also submitted a copy of [redacted] United States passport identity page. This passport was issued in January 1987. That is, the applicant provided documentation that indicates that [redacted] was in the United States for parts of the statutory period; however, he did not provide evidence to support that finding that [redacted] resided in the United States throughout the statutory period, and as such he could have personal knowledge that the applicant resided in the United States throughout this period.

In addition, the applicant submitted a copy of the New York City, Department of Consumer Affairs, Home Improvement Salesperson Licensee identification card for [redacted] issued during April 2002. Also in the record is the statement of [redacted] in which [redacted] indicated that he has known the applicant since August 1980.[2] He did not indicate whether he

[2] Originally the statement indicated that [redacted] met the applicant in June 1980. The statement indicates that [redacted] scratched through the month "June" where it appeared on this statement and wrote in "August" by hand. After this, he placed his initials next to August. Thus, even though this statement indicates that [redacted] signed and swore to the contents of the document before a notary, it is not considered an affidavit as it is not clear when this type-written document was altered.

met the applicant in the United States or outside the United States. [redacted] indicated that he resides in Brooklyn, New York and that he rented his basement to the applicant. He did not indicate during what months the applicant began renting from him and stopped renting from him. He did state that he has personal knowledge that the applicant departed the United States for a brief visit to Pakistan during January/February 1988, and that he has personal knowledge of this because the applicant was living in his home at that time. [redacted] also stated that the applicant was physically present in the United States from November 6, 1986 through May 4, 1988, and that he was continuously residing in the United States from August 1980 through the date that he signed that statement, July 1, 2001, except for brief visits to see his family in Pakistan. He did not state how he has knowledge of this.

Finally, in response to a point made in the NOID, the applicant stated in the rebuttal that the affidavit of [redacted], submitted with the Form I-485, did have attached a copy of [redacted] New York Driver License issued in 1998 and of [redacted]s City of New York, Department of Consumer Affairs, Home Improvement Contractor License, issued on July 11, 1986. In this affidavit, [redacted] attested that the applicant worked with him from April 1985 through January 1988 as a construction worker. He attested that the applicant was continuously physically present in the United States from November 6, 1986 through May 4, 1988, except for a brief visit to Pakistan in January/February 1988. He attested that his personal knowledge of the applicant's continuous presence is based on having worked with him from April 1985 through January 1988. [redacted] did not indicate that he has personal knowledge of the applicant's address in the United States during any portion of the statutory period.

In the notice of decision, the director indicated that the explanations that the applicant provided for the inconsistencies set forth in the NOID "appear to be scripted and rehearsed" and that the affidavit submitted with the rebuttal is "predictable boilerplate." The director did not specify what she found lacking in the applicant's explanations or in the affidavit. The director also concluded that because the letter in the record from the [redacted] was similar to hundreds of others received with other applications, that the applicant's letter from this mosque was "deceitfully created." The director concluded that the applicant had misrepresented material facts in order to gain a benefit under the Act. She did not indicate the specific facts that she had determined were misrepresented. She then made a finding that the applicant is not admissible to the United States for having misrepresented material facts.

On appeal, the applicant stated through counsel that the U.S. Supreme Court has indicated that a government agency must provide a reasoned analysis explaining its decisions and demonstrating that the agency has properly weighed and considered the evidence. Counsel cited *Universal Camera Corp. v. NLRB,* 340 U.S. 474, 491 (1951) (which holds that the adjudicator should take into account and reflect in his or her decision consideration of both those facts that support the conclusion, and the evidence of record that detracts from it); and *Cordero-Trejo v. INS*, 40 F.3d 482, 487 (1st Cir. 1994) (which states that deference is not due to the agency where findings are based on inferences that are not reasonably grounded in the evidence viewed as a whole or are simply the personal views of the adjudicator). The applicant indicated through counsel that the director had failed to provide a reasoned analysis.

The AAO withdraws the points from the notice of decision summarized two paragraphs prior to this paragraph. In these points, the director refers to other records that, for example, apparently contain letters similar to the [redacted] letter in the record, and the director refers indirectly to other records when she indicates that the applicant's explanations seem "rehearsed" or that his affidavits are "predictable boilerplate." Each application is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). The record of proceeding in this instance consists of the material in the A-file. *See* 8 C.F.R. § 103.8(d). Further, if the decision will be adverse to the applicant and is based on derogatory information considered by USCIS of which the applicant is unaware, he shall be advised of this and offered an opportunity to rebut the information and present evidence in his own behalf before the decision is rendered. *See* 8 C.F.R. § 103.2(b)(16)(i). The A-file does not contain specific information or evidence relating to other questionable or fraudulent applications from other aliens, nor does it include evidence that the applicant was ever provided notice of any such derogatory information.

At issue in this proceeding is whether the applicant is able to establish that he resided continuously in the United States from some date prior to January 1, 1982 through May 4, 1988, and whether he is admissible to the United States.

On March 5, 2009, the AAO provided the applicant with a notice of intent to dismiss which stated that the record includes the following adverse or inconsistent evidence regarding these points:

[redacted] letter in the record indicates that the applicant regularly attended Friday prayers at this mosque in Brooklyn from 1982 through the date that letter was signed, June 15, 2001. However, on the Form I-687 the applicant stated under penalty of perjury that he lived in Chicago, Illinois from approximately January 1989 through at least April 1990, when he was interviewed in relation to that form. This discrepancy casts doubt on the statements made in the [redacted] letter in the record and on all the evidence of record.

Further, on the Form I-687 filed on April 5, 1990, the applicant stated that he made his first entry into the United States in August 1980. [redacted], the individual who provided a statement for the record, indicated that the applicant has resided in the United States since August 1980. On his signed statement in the record dated July 21, 2001, the applicant stated that he first entered in August 1980. At the LIFE legalization interview, the applicant testified that he first entered in 1980. However, when stopped upon entry at John F. Kennedy (JFK) International Airport/New York City in 1998, the applicant gave a sworn statement, which was read back to him that he might verify the accuracy of each line and then initial each page, in which he stated that he first entered the United States in 1981. Also in 1996, when the applicant filed the Form I-90, Application to Replace Alien Registration Card, he indicated on that form at Part 3 that he

was admitted into the United States in 1981.[3] The applicant's inability to provide a consistent account regarding whether he first entered the United States in August 1980 or at some point during 1981 casts doubt on his claim that he entered prior to January 1, 1982 and on all the evidence of record.

The AAO pointed out in the notice of intent to dismiss that these discrepancies cast doubt on the authenticity of all the evidence of record, including the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

As stated in the notice of intent to dismiss, such inconsistencies in the record may only be overcome through independent, objective evidence of the applicant's claim that he resided continuously in the United States throughout the statutory period. The applicant had failed to provide contemporaneous evidence that might be considered credible, independent, objective evidence of having resided in the United States throughout the statutory period.

The AAO also stated that the various statements and affidavits currently in the record which attempt to substantiate the applicant's residence and employment in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States throughout the statutory period. This office also noted that the affidavits and statements in the record lack detail relating to the applicant's claim of continuous residence. The AAO determined that these statements and affidavits are not probative.

The AAO found that the applicant failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988. The AAO provided the applicant with fifteen days to provide evidence that might overcome these findings.

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[3] The applicant apparently had lost his Employment Authorization Document (EAD). He had first qualified to apply for this EAD based on his class membership interview and filing of the Form I-687 in 1990. He mistakenly filed the Form I-90 and indicated on that form that he had "conditional residence status" and needed a replacement card to provide proof of that. In fact, the applicant needed a replacement Form EAD which had been issued based on the filing of an application for temporary residence submitted in conjunction with a class-membership application. The AAO adds this note simply to explain why this Form I-90 is in the record. The AAO is not implying that the applicant intentionally filed the incorrect form.

In addition, the AAO stated in the notice of intent to dismiss that the record shows that the Immigration Judge (IJ) terminated the applicant's removal proceedings on April 14, 1998, and no removal order was issued. The applicant had tried to gain admission on March 15, 1998 using Advance Parole. However, the IJ determined that the legalization class-action lawsuit upon which his request for Advance Parole was granted had been dismissed. Consequently, the applicant no longer had any legal basis for entering or remaining in the United States. At the applicant's hearing, the IJ allowed the applicant to withdraw his application for admission. The applicant returned to Pakistan using an airline ticket which he purchased himself. On the Form I-765, Application for Employment Authorization, filed February 24, 2003, the applicant indicated at items 12, 13 and 14 that on September 18, 1998 he re-entered the United States as a B2, visitor for pleasure, at JFK International Airport in New York City.

Thus, according to the record in September 1998, when the applicant presented himself for entry into the United States, he misrepresented himself as a B2 nonimmigrant visitor for pleasure. According to the claims that the applicant has made in this proceeding, his actual intent upon returning was to continue residing unlawfully in the United States. Thus, in September 1998, the applicant procured entry into the United States by willfully misrepresenting a material fact. As such, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.[4]

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 is admissible to the United States. *See* 8 C.F.R. § 245a.12(e). The applicant may only overcome this ground of inadmissibility if he applies for and secures a waiver for the ground of inadmissibility at issue in the matter. *See* 8 C.F.R. § 245a.18(c).

This office specified in the notice of intent to dismiss that the record as it currently stood indicated that the appeal should also be dismissed because the applicant is not admissible.

The AAO stated that the applicant must offer independent, objective evidence from credible sources which thoroughly address and rebut the discrepancies described above, and he must demonstrate that he is admissible or this office would dismiss the appeal.

In response to the notice of intent to dismiss the applicant failed to provide any independent, objective evidence to support his claim that he resided continuously in the United States during the statutory period or to indicate that he is admissible to the United States.

The applicant presented an affidavit dated March 15, 2009 in which he attested that he resided in Chicago from approximately January 1989 through October or November 1990. The applicant did not address the point raised in the notice of intent to dismiss regarding this time spent residing in

[4] The AAO informed the applicant in the notice of intent to dismiss that he may apply for a waiver of this ground of inadmissibility on the Form I-690, Application for Waiver of Grounds of Inadmissibility.

Illinois. That is, the fact that the applicant resided in Illinois from early 1989 through at least April 1990 undermines the credibility of any statement in the record which makes the claim that the applicant attended prayers every week in New York from 1982 through the 1990s and beyond. This discrepancy in the record in turn casts doubt on all of the applicant's evidence.

In his March 15, 2009 affidavit the applicant also indicated that when asked when he first entered the United States at times he would respond "before 1982," and that at times this response was misreported as him having stated that he first entered in 1981. He indicated that this is why the record shows that on many occasions he specified that he first entered in August 1980, and it also indicates that at times he claimed to have first entered in 1981. This explanation is not independent, objective evidence such that it might overcome the discrepancy in the record regarding when the applicant first entered the United States. It is also not a persuasive explanation for the discrepancy for the following reason. In the sworn statement in the record which the applicant gave to immigration officials at JFK International Airport on March 15, 1998, the applicant stated through an Urdu translator that the first time that he entered the United States was in 1981 in a truck from Mexico. This statement was then read back to the applicant in Urdu that he might confirm or deny its accuracy. The record shows that the applicant volunteered having entered in 1981. He did not state that he entered before 1982.

In his March 15, 2009 affidavit, the applicant also attested that when he told the individual preparing his Form I-765 in 2003 that he entered on September 18, 1998, the preparer must have assumed that he entered as a visitor for pleasure. He indicated that he did not tell the preparer that he entered as a visitor. This assertion is not persuasive. It suggests that the preparer properly elicited from the applicant the information needed to complete certain parts of the form such as the date of the applicant's most recent entry, his date of birth, his marital status, etc. Yet, the preparer, for no apparent reason, failed to ask the applicant for the information required on other parts of the form, such as the applicant's manner of entry (visitor) and his place of entry (JFK International Airport), and instead simply inserted what he assumed was the applicant's manner of entry and place of entry. The AAO finds that a preponderance of the evidence indicates that the applicant entered as a B2, visitor for pleasure, at JFK International Airport during September 1998. Thus, he is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant asserted that he has filed the Form I-690, he provided a copy of that completed form and he indicated that it has not yet been adjudicated. Because the form has not been adjudicated, the applicant remains inadmissible and the appeal must be dismissed on this basis.

In the brief submitted in response to the notice of intent to dismiss, the applicant indicated through counsel that the AAO should accept affidavits and statements related to the applicant's continuous residence as sufficient evidence that he did reside in the United States throughout the statutory period. As stated in the notice of intent to dismiss, where the affidavits and statements in the record are detailed and consistent as to each other and as to the other evidence of record, they may be sufficient on their own to support a finding that the applicant resided continuously in the United States throughout the statutory period. However, in this instance, as noted in the NOID and in the notice of intent to dismiss, the affidavits and statements in the record lack detail and lack

documentation that the affiant resided in the United States throughout the statutory period.[5] Moreover, in this case, the evidence in the record related to continuous residence is contradictory in that the applicant provided different dates of initial entry, and a statement submitted in support of his claim of continuous residence places the applicant in New York from 1982 through the 1990s and beyond, whereas the applicant resided in Illinois for over one and one-half years during 1989/1990. Because of these discrepancies in the evidence, affidavits and statements alone are not sufficient; the applicant must provide independent, objective evidence to support his claim that he resided continuously in the United States throughout the statutory period that is sufficient to overcome discrepancies in the evidence.

The applicant has failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988. Thus, he is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act. The appeal is dismissed on this basis.

The appeal is also dismissed because the applicant is inadmissible to the United States.

The applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act for the reasons stated above, with each considered as an independent and alternative basis for denial.

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

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[5] In response to the notice of intent to dismiss, the applicant submitted a statement from one of counsel's employees which counsel notarized. Statements which counsel or counsel's employees create to support the applicant's claim that he resided in the United States throughout the statutory period are not probative evidence. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503 (BIA 1980)(which indicate that the assertions of the applicant's representative or of the petitioner's representative are not evidence and thus are not entitled to any evidentiary weight.) The applicant also submitted an additional affidavit from This affidavit is more detailed than the affidavit of [redacted] submitted in response to the NOID. It is not however independent, objective evidence sufficient to overcome the discrepancies in the record. It also does not address the evidence in the record that [redacted] entered the United States as a nonimmigrant on November 30, 1982 and April 20, 1984, as indicated in the notice of intent to dismiss. These nonimmigrant entries suggest that [redacted] did not reside continuously in the United States throughout the statutory period; rather, he was in the United States for only parts of the statutory period. It follows from this that [redacted] does not have personal knowledge as to whether the applicant resided in the United States throughout the statutory period. The a licant has failed to provide any documentation that might support the finding that resided continuously in the United States throughout the statutory period.