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

U.S. Citizenship and Immigration Services

L2

[redacted]

FILE: MSC 02 144 61299 Office: GARDEN CITY Date: DEC 0 2 2009

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. All documents have been returned to the office that originally decided your case. 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.

Perry Rhew
Chief, Administrative Appeals Office

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

The director denied the application after determining that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The director noted deficiencies and discrepancies in the evidence submitted by the applicant in denying his claim.

On appeal, counsel submits a brief stating that the evidence submitted establishes eligibility for the immigration benefit sought. [1]

It is noted that the applicant requested a copy of the record of proceeding under the Freedom Of Information Act (FOIA). The FOIA request was processed on June 3, 2009.

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* § 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 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 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.

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[1] [redacted]

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).

Here, the applicant submitted evidence that is not relevant, probative and credible. The applicant submitted the following information in support of his claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988:

- The applicant submitted witness statements from the following individuals in support of his application: [redacted] and [redacted] The statements are general in nature with the witnesses stating that they have knowledge of the applicant's residence in the United States during all, or a portion of, the requisite period.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The witness statements provided do not provide detailed evidence establishing how the witnesses knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the witnesses could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific time period. The statements must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the witness does, by virtue of that relationship, have knowledge of the facts asserted. The witness statements submitted by the applicant, therefore, are not deemed probative and are of little evidentiary value.

- The applicant submitted tax returns and W-2 Forms for the years 1986, 1987 and 1988.

The tax returns are in the name of [redacted] with social security number [redacted] The applicant claims to have been employed under that name. In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that he is the person who used that name. An applicant's true identity is established pursuant to 8 C.F.R. § 245a.2(d)(1). The assumed name must appear in the documentation provided by the applicant to establish eligibility. To meet the requirements of this regulation, documentation must be submitted to prove the common identity, i.e., that the assumed name was in fact used by the applicant. As noted in 8 C.F.R. § 245a.2(d)(2), the most persuasive evidence is a document issued in the assumed name which identifies the applicant by photograph, fingerprint or a detailed physical description. Other evidence which could be considered are detailed sworn affidavits which identify the affiant by name and address, state the affiants relationship to the applicant and a detailed description of the basis of the affiant's knowledge of the use of the assumed name by the applicant. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to the affiant under the

assumed name will carry greater weight. The tax returns are of no probative value as the applicant has not established that he was ever employed under that assumed name. It should further be noted that the addresses listed on the 1986 and 1987 tax returns do not coincide with address information provided by the applicant on a Form I-687 signed by him under penalty of perjury on August 9, 1991.

- The applicant submitted a 1988 tax return in his name, along with a W-2 Form from [redacted] This employer is not listed by the applicant on the Form I-687 signed by the applicant on August 9, 1991.

- The applicant submitted a hand written rent receipt dated November 1, 1984. The receipt does not state the applicant's address and is, therefore, of little evidentiary value as it is not further explained in the record.

- The applicant submitted envelopes addressed to him bearing metered post mark dates in 1981, 1982 and 1984. The envelopes do not establish the applicant's residence throughout the requisite period and the metered post mark dates are not subject to verification.

The applicant submitted the following employment statements in support of his application:

- A statement from [redacted] who states that the applicant was employed by [redacted] as a maintenance person from February of 1982 to May or June of 1983, working full-time and earning $5.00 per hour. The director noted that public records indicate that [redacted] was incorporated in 1984 and involuntarily dissolved on November 16, 1987.

- A statement signed by [not legible], [redacted], which states that the applicant was employed by that company from 1984 until the date of the statement (July 8, 1991). The applicant began work as a cleaning/repair man earning $5.00 per hour before being promoted to a superintendent earning $10.00 per hour.

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 employment statements submitted by the applicant fail to provide the information required by the above-cited regulation. The statements do not provide: the applicant's address at the time of employment; show periods of layoff (or state that there were none); declare whether the information provided was taken from company records; or identify the location of such company records and state whether they are accessible or in the alternative why they are unavailable. As such, the employment statements are not deemed probative and are of little evidentiary value.

Based upon the foregoing, it is found that the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988. Accordingly, the applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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