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

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U.S. Citizenship
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[redacted]

FILE: [redacted] Office: FRESNO Date: JUL 23 2009

MSC-02-124-61374

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.

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, Fresno, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988.

On appeal, the applicant reiterated his claim of continuous residence in the United States from prior to January 1, 1982 through May 4, 1988.

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of the following:

- Affidavits from [redacted] and [redacted] Although the affiants state that they have known the applicant since before January 1, 1982, the statements do not supply enough details to lend credibility to an at least 24-year relationship with the applicant. For instance, the affiants do not indicate how they date their initial meeting with the applicant, how frequently they had contact with the applicant, or how they had personal knowledge of the applicant's presence in the United States. Further, the affiants do not provide information regarding where the applicant lived during the requisite period. Given these deficiencies, these affidavits have minimal probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

- A signed by [redacted] representative of American Micro Technology. This letter indicates that the applicant was employed by the company from 1981 until 1985 in the packing department. Although the statement is on company letterhead, it is not notarized. It also 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 Mr. [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.

- A second employment verification letter signed by and written on the letterhead of 3Y Power Technology, Inc. The declarant indicates that the applicant was employed by the company in the shipping and receiving department, from 1985 until 1989. This letter fails to include the information required by 8 C.F.R. § 245a.2(d)(3)(i) as noted above.

- Copies of federal tax returns for the years 1981 through 1987. The applicant did not submit W-2 or a Social Security Earnings Statement confirming employment for these years.

- Two rental agreements signed by [redacted] The first, dated January 1, 1981 is related to [redacted] in Garden Grove, California. The second lease, date January 1, 1987 relates to [redacted] in Tustin, California.

- Rental receipts, signed by [redacted] dated in 1981 through 1989. The receipts do not contain a rental address. They include receipts for 1989. This is inconsistent with the applicant's testimony at his February 7, 2006 interview with United States Citizenship and Immigration Services (USCIS) in which he indicated that he resided in Fresno, California in 1989, not in Southern California in property leased from [redacted]

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he has continuously resided in the United States for the duration of the relevant period. He has therefore, not established that he is eligible for the benefit sought on this basis.

Furthermore, the director noted several inconsistencies within the record, which the applicant has failed to address on appeal. Most notably, on his Form I-687, filed March 24, 1990, the applicant indicated that he was absent from the United States only one time since his initial entry, in November 1987. However, in his USCIS interview on February 7, 2006, the applicant indicated that he departed the United States at the end of 1987 to visit his sick father, and that he did not return until March 1988. This contradictory testimony seriously undermined the applicant's credibility as well as the credibility of her claim of continuous residence in the United States from prior to January 1, 1982 to May 4, 1988. 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 applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591. In this case, the applicant failed to explain that his absence was delayed for an emergent reason.

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that "emergent" means "coming unexpectedly into being."

Continuous unlawful residence is broken if an absence from the United States is more than 45 days on any one trip unless return could not be accomplished due to emergent reasons. 8 C.F.R.

§ 245a.2(h)(1)(i). "Emergent reasons" has been defined as "coming unexpectedly into being." *Matter of C,* 19 I&N Dec. 808 (Comm. 1988).

The applicant's admitted absence from the United States from December 1987 to March 1988, a period of more than 45 days, is clearly a break in any period of continuous residence he may have established. As he has not provided any reason for his failure to return to the United States in a timely manner, he has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period, 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 as well.

Given the applicant's reliance upon documents with minimal probative value, 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 May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

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