U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

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FILE: [redacted] Office: LOS ANGELES, CA Date: MAR 05 2009

MSC 03 245 64186

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 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.

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 District Director (director), Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The matter will be returned to the director to complete the adjudication of the application for permanent residence.

The director denied the application because she determined 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.

On appeal, counsel asserted that the applicant did establish continuous, unlawful residence in the United States during the statutory period.

An applicant for permanent resident status under the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in any of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993)(CSS), *League of United Latin American Citizens v. INS, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993)(LULAC), or *Zambrano v. INS, vacated sub nom. Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993)(Zambrano). *See* 8 C.F.R. § 245a.10.

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 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 "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.* 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 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.

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 during the statutory period. *See id.*

Documentary evidence may be in the format prescribed by Citizenship and Immigration Services (CIS) regulations. *See Matter of E-M-,* 20 I&N Dec. 77 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 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]

At issue in this proceeding is whether the applicant has submitted credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has met this burden.

On or about April 20, 1992, the applicant applied for class membership in a legalization class-action lawsuit and submitted the Form I-687. On June 2, 2003, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust 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).

The record includes the following documents related to the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988:

1. The birth certificate of the applicant's daughter, [redacted] which has the embossed seal of the Registrar-Recorder/County Clerk City of Los Angeles, California. The birth certificate lists [redacted]'s date of birth as August 7, 1981 and her place of birth as Los Angeles County-USC Medical Center. It also lists [redacted] as her father and [redacted] as her mother.

2. The birth certificate of the applicant's son, [redacted], which has the embossed seal of the Registrar-Recorder/County Clerk City of Los Angeles, California. The birth certificate lists [redacted]'s date of birth as August 1, 1983 and his place of birth as Los Angeles County-USC Medical Center. It also lists [redacted] as his father and [redacted] as his mother.

3. The birth certificate of the applicant's son [redacted], which has the embossed seal of the Registrar-Recorder/County Clerk City of Los Angeles, California. The birth certificate lists [redacted]'s date of birth as May 28, 1987 and his place of birth as Granada Hills Community Hospital, Los Angeles County, California. It also lists [redacted] as his father and [redacted] as his mother.

4. A copy of the applicant's California Driver License which lists his name as [redacted] and his address as [redacted] The license appears to have been issued in 1984 and it expired on August 16, 1988.

5. A July 29, 1991 computer printout of a driver license/identification card information request from the California Department of Motor Vehicles (CA DMV) for the applicant which states that his California Driver License was first issued on August 13, 1984. It states the applicant's name and date of birth. In addition, it gives the applicant's address as of May 28, 1986 as [redacted] It lists his address as of November 5, 1987 as [redacted]. The printout also indicates that the CA DMV has no record of the applicant ever being in an accident, ever having the department take action against him or ever being convicted.

6. A copy of the applicant's 1982 Form 1040, U.S. Individual Income Tax Return, which lists the applicant's occupation as "shipping", his address as [redacted] Hollywood CA 91605 and his Social Security Number as [redacted]. It was signed by the applicant and his tax preparer on February 19, 1983. It lists the applicant's wages, salaries and tips for the year as $8,868.

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[2] On all other documents throughout the record, [redacted] is the spelling used for the first name of the applicant's children's mother. The County Clerk apparently misspelled her first name here.

7. A copy of the applicant's 1982 Form W-2, Wage and Tax Statement. The left portion of the form was apparently folded when making the copy in the record such that only the applicant's middle initial and last name appear on the file copy, not his first name. In addition, the building number portion of the address does not appear in the applicant's [redacted] address on the record copy. Also, the full name of the company that issued the Form W-2 is not visible on the copy, only: "...CK International, Incorporated." The record copy of the 1982 Form W-2 does list the applicant's wages for the year as $8868.28 and his Social Security Number as [redacted] Other documents in the record corroborate that this Social Security Number is indeed the Social Security Number used by the applicant and the amount that the applicant earned during 1982.

8. The Form I-687 signed by the applicant under penalty of perjury on March 24, 1992. At item 36, the applicant listed that from May 1982 through August 1983, his employer was "[redacted] Sun Valley, California. He indicated that he worked as a stock or inventory person while with that company. The AAO notes that in keeping with this claimed employment according to the [redacted] website, [redacted] began as [redacted] of New York and then later became [redacted] *See* [redacted] (accessed February 23, 2009). In addition, the California Secretary of State lists information at its online business portal which indicates that [redacted] Incorporated did begin operating in California in 1975 and that it has since surrendered its license to operate. *See* [redacted] (accessed February 23, 2009). No specific address is listed at this online portal for [redacted] in California. *See id.*

9. A copy of the applicant's 1983 Form 1040 which lists his occupation as "operator", his address as [redacted] and his Social Security Number as [redacted]. The form lists the applicant's wages, salaries and tips for the year as $3,982. It was signed by the applicant and his tax preparer on February 18, 1984.

10. A copy of the applicant's 1984 Form 1040 which lists his occupation as "operator", his address as [redacted] and his Social Security Number as [redacted]. The form lists the applicant's wages, salaries and tips for the year as $11,426. It was signed by the applicant's tax preparer on January 18, 1985.

11. A copy of the applicant's 1984 Form W-2. The applicant's address is listed as [redacted] is listed as the applicant's employer. The form lists the applicant's wages for the year as $11,426 and his Social Security Number as [redacted]

12. A copy of the applicant's 1985 Form 1040 which lists his occupation as "operator", his address as [redacted] and his Social Security Number as [redacted]. The form lists the applicant's wages, salaries and tips for the year as $3,509. It is dated March 30, 1986, but the record copy is not signed by the applicant or the tax preparer.

13. A copy of the State of California Employment Development Department record of Unemployment Compensation Payments made to the applicant during 1985. It lists the applicant's address as [redacted]. It indicates that the applicant received $1,596 in unemployment compensation during 1985.

14. A receipt issued by [redacted] on March 8, 1986. The receipt is made out to the applicant and lists [redacted] as his address. The receipt indicates that the applicant made a $30 down payment on a television set, and that $523 remained owing on the set as of March 8, 1986.

15. A copy of a letter from the applicant's tax preparer, of North Hollywood, which is not dated. The letter instructs the applicant to sign his enclosed 1984 Federal Individual Income Tax Return and State Income Tax Return. The letter also indicates that the applicant would be receiving a $529 refund in relation to his federal taxes and a $177 refund in relation to his state taxes.

16. The affidavit of dated April 1, 1992 on which the affiant attested that he met the applicant in 1981 when he rented a house from him. In addition, he attested that he had personal knowledge that from October 1981 through October 1986, the applicant resided at [redacted] from October 1986 through July 1987, he resided at [redacted] from July 1987 through July 1991, the applicant resided at [redacted]; from July 1991 through November 1991, he resided at [redacted] and from November 1991 through the date the affidavit was signed, the applicant resided at [redacted]. Finally, the affiant indicated that from 1981 through the date the affidavit was signed, he saw the applicant at least once a month. The affidavit is amenable to verification in that the affiant included his address.

17. The affidavit of [redacted] dated March 18, 1992 on which the affiant attested that he met the applicant in 1981 when the two of them were neighbors in the same apartment complex. He also attested that he is a cook and that the applicant had worked for him since 1987. In addition, he attested that he had personal knowledge that from 1981 through October 1986, the applicant resided in North Hollywood; from October 1986 through July 1987, he resided at [redacted], Pacoima, California; from July 1987 through July 1991, the applicant resided at [redacted] North Hollywood, California; from July 1991 through November 1991, he resided at [redacted], North Hollywood, California; and from November 1991 through the date the affidavit was signed, the applicant resided at [redacted] North Hollywood, California. Finally, the affiant indicated that from 1981 through the date the affidavit was signed, he saw the applicant at least once a month. The affidavit is amenable to verification in that the affiant included his address. [redacted], North Hollywood, California 91606.

18. The Form I-687 signed and dated March 24, 1992 on which at item 36 the applicant indicated that from 1987 through the date that form was signed, he worked as a cook's helper at [redacted] located at the same address as [redacted] listed for himself in the affidavit summarized at item 17 above, [redacted] North Hollywood, California. He also indicated that from August 1983 through 1987, he worked for [redacted] Van Nuys, California.

19. A copy of the receipt of a payment of $118.87 made on December 30, 1985 in relation to the [redacted] Employee Stock Ownership Plan Trust. A notation on the receipt indicates that the payment represents termination. This notation apparently is intended to indicate that this is a final payment in a series of payments. The payment was addressed to the applicant at [redacted] Hollywood, California 91605. The AAO notes that ownership of employee stock implies that the applicant had been an employee at [redacted]

20. The Form I-687 signed and dated on March 24, 1992 which states that the applicant first entered the United States during December 1979, that he did not depart this country until June 1987 and that he re-entered the United States in July 1987.

21. The Form for Determination of Class Membership *CSS v. Meese* which the applicant signed under penalty of perjury. The AAO notes that this document is not dated, but also there is not a space on this form designated for the date. At item 6, the applicant stated that he first entered the United States during December 1979. At item 9, he stated that he did not depart the United States until June 28, 1987 and that he re-entered on July 30, 1987. He also indicated here that he reentered in July 1987 to return to his residence in the United States as he had lived in this country since 1979.

There is a second Form I-687 in the record that is dated July 12, 1993 which is not signed. It lists the same addresses for the applicant during the same portions of the statutory period as those listed on the Form I-687 signed and dated March 24, 1992, as well as on the affidavits in the record. However, it includes some discrepancies at item 36 regarding the applicant's employment during the statutory period. For instance, [redacted] is not spelled as it appears on the Form W-2 in the record and as it appears on the signed Form I-687. Instead, it is spelled as [redacted]. [redacted] is listed as having the same address as that given for [redacted] on the Form W-2: [redacted], Van Nuys, California. The unsigned Form I-687 also indicates that the applicant worked at this position from 1984 through 1986, rather than August 1983 through 1987, as indicated on the signed Form I-687. In addition, the unsigned Form I-687 indicates that the applicant worked for [redacted] from December 1986 through the date that form was completed, rather than from 1987 onwards as indicated on the signed Form I-687. Also, according to the affidavit in the record the proper spelling of this employer's name is [redacted]. In addition, the unsigned Form I-687 indicates that the applicant worked at [redacted] from 1981 through 1984. However, the signed Form I-687 and the 1982 Form W-2 in the record suggest that the applicant worked at [redacted] during most of this period. The AAO would note that the December 1985 [redacted] Employee Stock receipt in the record does imply that the applicant was employed by [redacted] at some point. Regardless of whether there is an error on the unsigned Form I-687 or the signed Form I-687 regarding when the applicant worked at [redacted], this office finds that this discrepancy as well as these other discrepancies

relating to, for example, dates of employment which are listed here are not material. This is especially true given that the applicant has submitted many pieces of objective, contemporaneous documentation of having resided and worked in the United States throughout the statutory period.

There are no other documents in the record directly relevant to the applicant's claim that he resided continuously in the United States during the statutory period. The record does include the following documentation: the Form I-589, Application for Asylum and Withholding of Deportation; proof that the applicant failed to appear for his asylum interview; a copy of the notice which placed the applicant's asylum application in proceedings before the Executive Office for Immigration Review; a copy of the Immigration Judge's decision dated April 20, 1995 in which the judge ordered the applicant removed in *absentia*.[3]

[3] The record indicates that the applicant has never departed the United States and then re-entered since the Immigration Judge entered this removal order against him in *absentia* on April 20, 1995. Section 212(a)(9)(A) of the Act (relating to grounds of inadmissibility for aliens previously removed) applies only where the applicant has departed the United States or been removed subsequent to a removal order; it does not apply to an applicant who has been ordered removed in *absentia* and never departed the United States. *See* Memo, Crocetti, Assoc. Comm. INS, HQ 5015.12, 96 Act .034 (May 1, 1997), *reprinted in* 74 No. 18 *Interpreter Releases* 781, 791-94, 792 (May 12, 1997). Section 212(a)(6)(B) of the Act, regarding the inadmissibility ground applicable to aliens who fail to attend removal hearings who seek admission within five years of a departure made after the failure to appear, also only applies where an individual has been physically removed or departs the United States after failing to appear and then seeks re-entry. *See* Memo, Virtue, Acting Exec. Assoc. Comm., HQ IRT 50/50.2, 96 Act 043 (June 17, 1997), *posted on* AILA InfoNet at Doc. No. 97061790. Moreover, section 212(a)(6)(B) of the Act applies only to those placed in removal proceedings subsequent to April 1, 1997. *See id.* Legalization and LIFE legalization applicants are not subject to reinstatement of removal orders under section 241(a)(5) of the Act. *See* § 245a(d)(2) of the Act. The AAO finds that the applicant is not rendered inadmissible by this April 20, 1995 removal order. In addition, the AAO would acknowledge that the Form I-589 read together with the Form G-325A attached to that form indicate that the applicant resided in Mexico from birth until October 1986. This does not alter the AAO's finding that the preponderance of the evidence indicates that the applicant did reside continuously in the United States during the statutory period, for the following reasons. The applicant's signature on the Form I-589 and the attached Form G-325A is not consistent with his signature on statements taken before immigration officers and other various applications and forms found elsewhere in the record. For instance, the applicant signed his family name [redacted] as two words throughout the record. However, the individual who signed the Form I-589 and the attached Form G-325A signed as one word using handwriting that is different from that used by the applicant throughout the remainder of the record. Thus, it appears that someone other than the applicant signed the Form I-589 and Form G-325A. Moreover, as noted above, the applicant was never interviewed to confirm any of the information on these forms, including the claim that he had resided in Mexico until October 1986. Also, the individual who prepared the complex narrative on the Form I-589 indicated on that form that the applicant had prepared those statements himself. Yet, the record of the applicant's May 10, 2006 LIFE legalization interview English test in the file indicates that even as recently as 2006, the applicant was barely able to write simple English sentences such as "The car is red". Thus, there is no clear evidence in the record that the claims on the Form I-589 and supporting documents were made by the applicant or that the applicant is even aware of what those claims are. Yet, there is extensive independent, objective documentary evidence in the record to corroborate the applicant's claim and

On September 6, 2006, the director issued a Notice of Intent to Deny (NOID). She concluded that the applicant had failed to submit sufficient evidence of continuous, unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988.

The director also indicated that the application might be denied because the applicant failed to provide final dispositions of any arrests that may have occurred since 1990. However, included in the file are the results of a search of the records of Superior Court of California, County of Los Angeles, which indicate that there were no records on the applicant within this court's records. Also, according to the record, the U.S. Federal Bureau of Investigation (FBI) conducted a search for records of any arrests or convictions of the applicant based on his fingerprints. The FBI concluded that no arrest or conviction of the applicant had ever been reported to the FBI. Still, this office issued a request for additional evidence from the applicant related to his arrest history because a District Adjudications Officer noted on the Form I-485 that the applicant indicated during the LIFE legalization interview that he was stopped during 1981 and 1982 for "driving under the influence". Also, the record showed that the Los Angeles County Superior Court had failed to conduct a search using the applicant's full name. That court's search was based on the name: [redacted] date of birth: August 15, 1954. Yet, the search should have been based on the applicant's full name: [redacted]. In response to the AAO's request for evidence, the applicant submitted documentation which verified that he had requested that the Los Angeles Superior Court conduct a search using every variation of his name. The search led the court to determine that it had no records for the applicant. Also, the applicant submitted a statement through counsel in which he explained that he was never arrested. The applicant's statement indicated that in 1981 and 1982, police stopped him on the suspicion that he might have been driving under the influence of alcohol and that is to what he was referring during his LIFE legalization interview. However, in both instances, the police determined that he had not been driving under the influence, and thus no record was made of either incident. The police simply allowed him to drive on. The AAO finds that the evidence of record is consistent with the applicant's explanation for the police stops in 1981 and 1982; that the evidence of record supports the finding that the applicant would have no record to use to identify and/or contact the police officers involved in the 1981 and 1982 stops; and that the evidence of record supports the finding that the applicant has never been arrested.

The director also indicated that the applicant failed to provide original, embossed birth certificates from the Los Angeles County Registrar-Recorder/County Clerk. However, these birth certificates were received into the record on September 18, 2006.[4] These birth certificates establish that the applicant and [redacted]

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his affiants' claims that he resided continuously in the United States during the statutory period. Thus, in sum, the AAO finds that the Form I-589 and its supporting documents do not have probative value in the current proceedings. The AAO would note incidentally that the preparer used a "care of" address or what is, apparently, the preparer's own address where the applicant's address should have been written on the Form I-589. Thus, it is also not clear whether the applicant ever received any request to appear related to that application. The record also indicates that the "care of" address listed for the applicant on the Form I-589 belongs to an individual named [redacted], and that this individual relocated, such that letters sent in relation to the Form I-589 proceedings eventually began being returned, unopened to the record.

[4] In the decision to deny the director indicated that the applicant had failed to reply to the NOID. However, the record indicates that a response, which included documents such as the birth certificates of the applicant's children with the original embossed seal of the Los Angeles County Clerk, provided in a sealed envelope

Borjon had three children together during the statutory period, one child born in 1981, one born in 1983 and one born in 1987. The children were each born in metro-Los Angeles. Thus, these certificates support the applicant's claim that he resided continuously in the United States throughout the statutory period.

In the NOID, the director suggested that a LIFE legalization applicant must provide documentary evidence of having entered the United States prior to January 1, 1982, and of having been physically present in the United States from November 6, 1986 through May 4, 1988. These points in the NOID are withdrawn. The regulation at 8 C.F.R. § 245a.16 indicates that an applicant may use documentation issued by a governmental or nongovernmental authority to establish continuous physical presence, but it does not require such evidence. Contemporaneous, documentary evidence is also not, in all cases, required to establish the applicant's claim of continuous residence in the United States throughout the statutory period. *See Matter of E-M-*, 20 I&N Dec. 77, 82-83 (Comm. 1989). This includes one's claim of having entered and begun continuous residence in the United States on some date prior to January 1, 1982. *See id.* Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence throughout the entire statutory period. *See id.*

In response to the NOID, the applicant submitted, as noted earlier, the original, embossed birth certificates of his three children born during the statutory period, and a form prepared by the Los Angeles County Superior Court, certified by the court, which states that a thorough search had been conducted using the applicant's name and date of birth and no records were found for the applicant within the court's record storage area.

On October 31, 2006, the director denied the application for the reasons set out in the NOID. The director also appeared to suggest in the decision to deny that for any applicant to be eligible for benefits under the LIFE Act, the applicant must establish that his or her unlawful status in the United States was known to some office or agency within the U.S. government prior to January 1, 1982. This point in the decision to deny is withdrawn. This requirement applies only to those LIFE legalization applicants who entered the United States prior to January 1, 1982 as nonimmigrants, whose original period of lawful status was set to expire after January 1, 1982, but who claim to have fallen out of lawful status prior to that date. *See* Section 1104(c)(2)(B) of the LIFE Act which states in relevant part:

> (i) In General – The alien must establish that he or she entered the United States before January 1, 1982. . . .
>
> (ii) Nonimmigrants – In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, such alien must establish that the period of authorized stay as a nonimmigrant expired before such date through the passage of time or that the alien's unlawful status was known to the Government as of such date.

On appeal, counsel indicated that the applicant had resided continuously in the United States during the statutory period. He also resubmitted copies of evidence already in the record to substantiate the applicant's claim that he resided continuously in the United States throughout the statutory period.

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from the county as requested by the director, was received into the record on September 18, 2006. Thus, the point in the decision to deny that the applicant failed to reply to the NOID is withdrawn.

As noted earlier, if the applicant submits evidence that leads CIS to conclude that the claim is "probably true" or "more likely than not," the 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). Moreover, 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 submitted the original, embossed birth certificates of his three children who were born in metro-Los Angeles during 1981, 1983 and 1987. The AAO finds that this does support the claim that he was residing continuously in the Los Angeles area during the statutory period. The applicant also submitted independent, objective proof that the State of California first issued a driver license to him during 1984 while he resided at an address in North Hollywood, California, and that he updated his address with the California DMV in 1986 and in 1987. The applicant provided copies of his Forms W-2 for 1982 and for 1984. He also provided a copy of his record of unemployment compensation from the State of California for 1985. In addition to these pieces of independent, contemporaneous evidence, he provided copies of his Forms 1040 for 1982, 1983, 1984 and 1985. He submitted a copy of the receipt of a payment addressed to him at his address in North Hollywood on December 30, 1985 in relation to the [redacted] Employee Stock Ownership Plan Trust, which was apparently a final payment in a series of payments. The applicant also provided a copy of a 1986 receipt from [redacted], Redondo Beach, California that is made out to the applicant and lists his address in North Hollywood.

The record also includes the detailed affidavit of [redacted] on which the affiant attested that he met the applicant in 1981. [redacted] also attested that he is a cook and that the applicant had worked for him from 1987 through 1992. In addition, he attested that he had personal knowledge that from 1981 through October 1986, the applicant resided in North Hollywood; from October 1986 through July 1987, he resided at [redacted]; from July 1987 through July 1991, the applicant resided at [redacted] from July 1991 through November 1991, he resided at [redacted] and from November 1991 through the date the affidavit was signed, the applicant resided at [redacted] California. Finally, the affiant indicated that from 1981 through the date the affidavit was signed in 1992, he saw the applicant at least once a month.

The applicant also provided the detailed affidavit of [redacted] on which the affiant attested that he met the applicant in 1981 in California. He also attested that he had personal knowledge that from October 1981 through October 1986, the applicant resided at [redacted] from October 1986 through July 1987, he resided at [redacted]; from July 1987 through July 1991, the applicant resided at [redacted] from July 1991 through November 1991, he resided at [redacted] and from November 1991 through the date the affidavit was signed in 1992, the applicant resided at [redacted]. Finally, the affiant indicated that from 1981 through the date the affidavit was signed, he saw the applicant at least once a month. The affidavit is amenable to verification.

The record also includes the Form I-687 signed and dated on March 24, 1992 and the Form for Determination of Class Membership *CSS v. Meese* which both indicate that the applicant first entered the

United States during December 1979, and that he resided continuously in this country throughout the statutory period, having only one absence for less than 35 days during June, July 1987.

This office finds that the preponderance of the evidence supports the applicant's claim that he resided continuously in the United States throughout the statutory period.

Thus, the AAO finds that the applicant has established continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988.

ORDER: The appeal is sustained. The director shall continue the adjudication of the application for permanent resident status. The new decision, if adverse to the applicant, shall be certified to this office for review.