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U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] Office: NEW YORK, NEW YORK Date: **AUG 21 2008**
MSC 02 082 60776

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 late legalization provisions of the Legal Immigration Family Equity (LIFE) Act was denied by the District Director (director), New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. The director also indicated that the applicant failed to provide sufficient, credible evidence that he was continuously present in the United States during the statutory period beginning on November 6, 1986 and ending on May 4, 1988.

On appeal, counsel asserted that the applicant did maintain continuous unlawful residence and physical presence in the United States during the statutory periods.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must establish his or her continuous, unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act states in relevant part:

(i) In General – The alien must establish that he or she entered the United States before January 1, 1982, and has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

See also 8 C.F.R. § 245a.11(b).

The regulation at 8 C.F.R. § 245a.15(c) provides, in relevant part, that an alien shall be regarded as having resided continuously in the United States if:

(1) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

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.* 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 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 Matter of E-M-* 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 CIS 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 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 failed to meet this burden.

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 indicates that on or near January 12, 1992, 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 December 21, 2001, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The record contains documents that relate 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, including:

1. The affidavit of [REDACTED] of [REDACTED], Woodside, New York, dated February 4, 2004 in which the affiant attested that he has been the applicant's friend since 1960 and that he has personal knowledge that the applicant has resided in Antioquia, Colombia from 1960 through the date that document was signed. The affiant also attested that the applicant was a customer at his accounting office located in Woodside, New York.
2. The affidavit of [REDACTED] of [REDACTED], Woodside, New York, dated February 8, 2007 in which the affiant attested that he has known the applicant since March 1981 and that they met through a mutual friend.
3. The affidavit of [REDACTED] dated February 4, 2004 in which the affiant attested that he has personal knowledge that the applicant has resided in New York, City from 1985 through the date that document was signed. The affiant also attested that the longest period of time he went without seeing the applicant from 1985 through the date this affidavit was signed was 19 years and 9 months.
4. The employment verification letter on Coronet Carpets, Coronet Drive, Dalton, Georgia letterhead stationery dated December 3, 1991 on which the [REDACTED], the General Manager, wrote:

TO WHOM IT MAY CONCERN. (sic)

This is to certify that Mr. [REDACTED], worked this (sic) Company since Mey (sic) 1981 to June 3, 1988, (sic) His average salary was \$ 170.00 (sic) weekly, including tips, (sic) Mr. [REDACTED] is a hand (sic) worker and responsible person.

If any (sic) additional information is need, (sic) please do not hesitate to contact us at [REDACTED] New York 10016.

It is noted that the name [REDACTED] in [REDACTED] ends in a "p-h" where it is typed in this document but in the handwritten signature the name is written ending in an "f".

On January 5, 2007, the director issued a Notice of Intent to Deny (NOID) which indicated that the applicant had failed to demonstrate continuous residence in the United States during the statutory period.

In the NOID, the director noted that [REDACTED] notarized the affidavits which the applicant submitted. She stated that [REDACTED] had in the past notarized false documents. The director indicated that this fact undermined the credibility of the applicant's documents. This point in the NOID is withdrawn. 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, Citizenship and Immigration Services (CIS) 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 applicant's 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 CIS 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 applicant's A-file does not contain specific information or evidence relating to other questionable or fraudulent documents notarized by [REDACTED], nor does it include evidence that the applicant was ever provided notice of any such derogatory information.

In the NOID, the director also suggested that the lack of contemporaneous evidence of the applicant's claimed February 20, 1981 entry into the United States calls that entry into question. This point in the NOID is also withdrawn. 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 Matter of E-M-* at 82-83. Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence throughout the statutory period. *See Id.*

Also in the NOID, the director indicated that the two registered mail receipts in the record dated during the statutory period are not probative as they are not records of registered mail *received* by the applicant in the United States. Rather, they purport to be records of registered mail that the applicant posted to his mother in Colombia while he was living in the United States. The director's point is withdrawn insofar as this office finds that credible contemporaneous evidence of registered mail posted by the applicant while living in New York during the statutory period would be probative evidence. Nonetheless, the particular receipts in the record are not credible and probative in that they purport to be records of registered mail sent during the statutory period, complete with receipt signatures; however, on both original receipts in the record, the box in which a post office would have put the registered number of each mailing is blank. Also, the receipts state on their face that they are the "PO Copy" or post office copy of the receipt for this registered mail. The AAO finds that if this evidence was authentic and related to registered mail that was actually posted by the post office, the post office would have retained the post office copy and the applicant would have access only to the sender's copy of the receipt or possibly the recipient's copy.

In the NOID, the director pointed out discrepancies in the record relating to the applicant's claim that he resided continuously in the United States from some date prior to January 1, 1982 through May 4, 1988. For example, the director indicated that the applicant's claims that he was outside the United States for only 45 days during 1987, from January 20, 1987 through March 6, 1987, the date he entered as a B2 visitor for pleasure, and that as such, he did not break his continuous residence in the United States are undermined by the following. In order for these claims to be true, the Colombian government would have had to issue the applicant's passport to him in Colombia just one day after he departed the United States. Moreover, the U.S. consulate in Bogota would have had to have issued the applicant his B-2, visitor for pleasure, visa the day after that on January 22, 1987, after he had lived in New York City for six years. The director indicated that such documents take time to process and that the U.S. visa processing would require the applicant to demonstrate that he had an established residence and ties in Colombia. The director asserted that a preponderance of the evidence indicated that the applicant had to have been residing in Colombia prior to January 20, 1987 in order to establish for the U.S. Consulate in Bogota that he had a residence and ties in that country.

The director also indicated in the NOID that the statements and affidavits which the applicant submitted lacked specificity and as such she did not find this evidence to be probative.

In sum, the director indicated that because of inconsistencies and lack of specificity in the evidence of record, she concluded that the applicant had failed to establish continuous residence in the United States throughout the statutory period. For these reasons, the director intended to deny the application.

On rebuttal, counsel responded that the applicant had planned his visit to Colombia to begin just one day before his passport would be issued and two days before his visa would be issued to maximize the amount of time that he might spend with his family in Colombia. This response does not address the director's point that the applicant must demonstrate how he could have established for the U.S. consular officer that he had been residing continuously in Colombia during this period and had established ties in Colombia, such as a residence, employment, etc., if, in fact, he had been residing in the United States during 1981 through 1987 and had only returned to Colombia two days prior to his interview at the U.S. Consulate.

Counsel also submitted updated affidavits on rebuttal.

On March 1, 2007, the director denied the application based on the reasons set forth in the NOID. In addition, the director pointed out that the applicant submitted affidavits on rebuttal that are not probative in that the affiants claimed to have known the applicant since a certain date but the affiants did not indicate that they met the applicant in the United States. Also, the affiants did not otherwise make reference to the applicant entering the United States, nor did they place the applicant in the United States during the statutory period.

On appeal, counsel indicated that the affiants need not specify that they met the applicant in the United States and developed a relationship with him in the United States because in such affidavits these points are assumed. Counsel also indicated that the applicant has established that he was outside the United States for only 45 days during 1987, and that such a brief absence does not break the applicant's continuous residence in the United States. Counsel asserted that the applicant had demonstrated continuous residence in the United States throughout the statutory period.

The AAO finds that any assertion that the director should assume that the applicant's affiants met the applicant within the United States and developed a relationship with him in the United States is not persuasive. The AAO concurs with the director's finding that in each instance where the affiant failed to place the applicant in the United States during the statutory period, the affidavit is not probative.

Further, the applicant failed to provide evidence to overcome and failed even to address the director's finding that a preponderance of the evidence indicates that the applicant would have needed to have been residing or at least been present in Colombia prior to January 20, 1987 in order to demonstrate to a U.S. consular officer on January 22, 1987 that he had an established residence and other ties in Colombia. The applicant's failure to address this casts doubt on his claim that he was outside the United States for only 45 days prior to his March 6, 1987 entry as a B2 visitor for pleasure. This in turn casts doubt on the applicant's claim that he resided continuously in the United States throughout the statutory period.

In his affidavit dated February 4, 2004, [REDACTED] attested that he has been the applicant's friend since 1960 and that he has personal knowledge that the applicant has resided in Antioquia, Colombia from

1960 through the date that document was signed. Yet, in his affidavit dated February 8, 2007, Mr. [REDACTED] attested that he has only known the applicant since March 1981. Moreover, in this proceeding, the applicant is claiming to have resided continuously in the United States during the statutory period.

In his affidavit dated February 4, 2004, [REDACTED] attested that he has personal knowledge that the applicant has resided in New York City from 1985 through the date that document was signed, and he attested that the longest period of time that he has gone since 1985 through February 2004 without seeing the applicant was 19 years and 9 months. 19 years and 9 months is in fact a longer period of time than January 1, 1985 through February 28, 2004.

These discrepancies in the record cast serious doubt on the authenticity of all the evidence submitted. This in turn casts doubt on 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).

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 failed to provide credible, contemporaneous evidence that might be considered independent, objective proof of his having resided in the United States from a date prior to January 1, 1982 and throughout the statutory period. The envelope in the record which the applicant claimed was sent to him in the United States during the statutory period, even if the postmark with which it is stamped was found to be authentic, is not sufficient to establish that the applicant was in the United States *throughout* the statutory period.²

The AAO also finds that the various statements in the record which purport to substantiate the applicant's continuous residence in the United States throughout 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 in an unlawful status from a date prior to January 1, 1982 through May 4, 1988, and that these documents do not have probative value in this matter.

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, the applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

Finally, this office notes that according to evidence in the record, on June 12, 2002, the applicant pled guilty to New York Penal Code § 240.20 Disorderly Conduct in the Criminal Court of the City of New York,

² The second envelope in the record which is addressed to the applicant in the United States is not postmarked, and affixed to the envelope are stamps which, according to the writing on the face of the stamps, were issued in 1990. This envelope is neither probative nor relevant to the applicant's claim that he was in the United States during the statutory period.

County of Queens, in a case bearing Certificate of Disposition Number _____ and he was made to pay a fine of \$250. Under the New York Penal Code, such a conviction is listed as a “violation” only. This violation conviction does not affect the applicant’s eligibility for the benefit sought in this matter.

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