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U.S. Citizenship  
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Services

**PUBLIC COPY**



LL

FILE: [REDACTED]  
MSC 02 212 60651

Office: HOUSTON, TEXAS

Date: **JAN 09 2008**

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.

A handwritten signature in black ink, appearing to read "D. King" or similar, written over a horizontal line.

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

The district 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 asserts that the applicant did maintain continuous unlawful residence and physical presence in the United States during the statutory periods. Counsel also indicates that in 1983 and in 1988, the applicant was not able to return to the United States within 45 days due to emergent reasons related to his father's failing health. In addition, counsel suggests that Citizenship and Immigration Services (CIS) should approve the application based on overriding family unity considerations as the applicant's wife is a U.S. citizen and two of his children are U.S. citizens.

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).

Here, the submitted evidence is not relevant, probative and credible.

The record indicates that on or near April 5, 1995, 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 April 30, 2002, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The record contains the following documents relating 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 affidavit of [REDACTED] dated February 27, 2003 in which the affiant attested that she first met the applicant in November 1981. The affiant also attested to residing in the United States, but she did not specify in the affidavit whether she first met the applicant in the United States. This office notes that the applicant's marriage certificate in the record indicates that on June 17, 1996 [REDACTED] became the applicant's wife. In her affidavit, [REDACTED] attested to having met the applicant on a second occasion, but she did not acknowledge having married the applicant, nor does she indicate that she has personal knowledge of his having resided continuously in the United States during the statutory period. [REDACTED] birth certificate in the record indicates that her maiden name was [REDACTED].
2. A statement written by [REDACTED] dated February 18, 2003 which does not meet the legal requirements of an affidavit<sup>1</sup> that indicates that [REDACTED] has known the applicant since the

<sup>1</sup> On the page following [REDACTED] statement is an "acknowledgement certificate" dated February 25, 2003 on which a notary indicated that [REDACTED] acknowledged before her that she had signed an unspecified statement dated February 18, 2003. The notary did not state that [REDACTED] had, before her, subscribed and

summer of 1981. In the statement, [REDACTED] indicated that the applicant worked on her automobile during the summer of 1981 and that she resided in the United States. However, [REDACTED] did not specify where she met the applicant during the summer of 1981. [REDACTED] also did not indicate whether she has personal knowledge that the applicant resided continuously in the United States during the statutory period. The record does not indicate whether [REDACTED] is related to the applicant by marriage.

3. A statement written by [REDACTED]<sup>2</sup> dated January 25, 2001 which does not meet the legal definition of an affidavit<sup>3</sup> that indicates that [REDACTED] met the applicant during 1981. [REDACTED] also indicated that the applicant resided in Houston, Texas. However, [REDACTED] did not indicate where he met the applicant or that he had personal knowledge that the applicant resided continuously in the United States during the statutory period. In the statement, [REDACTED] did indicate that an official of the Immigration and Naturalization Service (INS), [now CIS], gave the applicant misinformation during the amnesty program of 1986-1987.
4. A statement written by [REDACTED] which does not meet the legal definition of an affidavit<sup>4</sup> that indicates that [REDACTED] has personal knowledge that the applicant was in the United States in early 1981. [REDACTED] also indicated in the statement that he has stayed in touch with the applicant since early 1981. However, he did not indicate that he had personal knowledge that the applicant resided continuously in the United States during the statutory period.
5. A statement written by [REDACTED] dated February 19, 2003 which does not meet the legal definition of an affidavit<sup>5</sup> that indicates that [REDACTED] has personal knowledge that the applicant was in the United States in late 1981. [REDACTED] did not indicate that he

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sworn to the truthfulness of the February 18, 2003 statement in the record, such that this statement might be considered an affidavit. *See Black's Law Dictionary* 58 (7th ed. 1999)(which indicates that an affidavit is a declaration of facts sworn to by the declarant before an officer authorized to administer oaths.)

<sup>2</sup> In the body of [REDACTED]'s statement, in his signature and in the notary's acknowledgement, Mr. [REDACTED] name is spelled as written here. However, under the signature line of the statement, Mr. [REDACTED] name is written with a "j" as in: [REDACTED]. In this analysis, this office will use the spelling:

<sup>3</sup> Following the statement is a sentence added by a notary dated January 29, 2001 in which the notary indicated that [REDACTED] acknowledged before her that he had signed the statement dated January 25, 2001. The notary did not indicate that [REDACTED] had subscribed and sworn to the truthfulness of the January 25, 2001 statement before her, such that this statement might be considered an affidavit, as indicated by the director in the request for further documentation dated October 29, 2002. The record also did not include a notarized copy of [REDACTED]'s identification document as requested by the director on October 29, 2002.

<sup>4</sup> A notary stamped and signed the document, but he did not indicate that [REDACTED] had subscribed and sworn to the truthfulness of the statement before him such that the statement might be considered an affidavit.

<sup>5</sup> A notary stamped and signed the document, but he did not indicate that [REDACTED] had subscribed and sworn to the truthfulness of the statement before him such that the statement might be considered an affidavit.

had personal knowledge that the applicant resided continuously in the United States during the statutory period.

6. A statement written by [REDACTED] dated February 21, 2003 which does not meet the legal definition of an affidavit<sup>6</sup> that indicates that [REDACTED] has known the applicant since 1981. [REDACTED] did not indicate where he met the applicant or that he had personal knowledge that the applicant resided continuously in the United States during the statutory period.
7. The affidavit of [REDACTED] dated April 28, 2000 which attests that the affiant has known the applicant for approximately 15 years. This office notes that this contradicts the statement of [REDACTED] summarized as item #2 above, which indicates that [REDACTED] met the applicant in 1981, rather than in 1985 as indicated on this affidavit. The affidavit also attests that in 1987 the INS [now CIS] informed the applicant that he did not qualify to become a legal resident because he had traveled outside the United States.
8. A statement written by [REDACTED] dated January 26, 2001 that does not meet the legal definition of affidavit<sup>7</sup> in which [REDACTED] indicated that she was aware that in 1987 the applicant “filed for Amnesty” and “was denied”, but that he “re-filed” in 1995 and was approved.
9. The affidavit of [REDACTED], the applicant’s wife, which attests that the affiant has personal knowledge that the applicant left the United States for a vacation in Mexico for two weeks during June 1987.
10. A copy of a receipt from St. Ann’s Medical Centre, Benin City, [Nigeria] which indicates that on June 22, 1988, the applicant made a deposit of six-thousand five-hundred naira<sup>8</sup> on behalf of the patient [REDACTED].<sup>9</sup> The record indicates that [REDACTED] is the applicant’s father.

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<sup>6</sup> A notary stamped and signed the document, but he did not indicate that [REDACTED] had subscribed and sworn to the truthfulness of the statement before him such that the statement might be considered an affidavit.

<sup>7</sup> Following the statement is a sentence added by a notary dated January 29, 2001 in which the notary indicated that [REDACTED] acknowledged before her that she had signed the statement dated January 26, 2001. The notary did not indicate that [REDACTED] had subscribed and sworn to the truthfulness of the statement before her, such that this statement might be considered an affidavit, as indicated by the director in the request for further documentation dated October 29, 2002. The record also did not include a notarized copy of Ms. [REDACTED] identification document as requested by the director on October 29, 2002.

<sup>8</sup> The naira is the currency used in Nigeria. See NigeriaBusinessInfo.com, <http://www.nigeriabusinessinfo.com/forex.htm> (accessed January 2, 2008).

<sup>9</sup> This office notes that the date convention used on this receipt is day/month/year or 22/6/88. For purposes of this analysis, this office will assume that the medical history notes which the applicant submitted into the record and presented as notes generated at St. Ann’s Medical Centre on behalf of his father follow the same date convention of day/month/year.

11. A copy of the hospital history and treatment card for [REDACTED]. The notes on these pages apparently relate to [REDACTED] medical history and treatment at St. Ann's Medical Centre. The notes indicate that on February 4, 1983, [REDACTED] was admitted to this institution and that he was discharged on April 16, 1983.<sup>10</sup> [REDACTED] was apparently readmitted on April 26, 1983 and discharged on August 19, 1983. The notes also indicate that [REDACTED] was admitted to St. Ann's Medical Centre on August 10, 1988 and discharged two days later on August 12, 1988. The notes also appear to refer to some treatment administered on an unspecified date in 1987 and in 1988. Finally, the notes appear to refer to the deposit of 6,500 naira made by the applicant. While much of the handwritten notes regarding [REDACTED]'s treatment is not legible, the record suggests that the applicant's father was treated for complications of diabetes as well as other less serious health problems at St. Ann's Medical Centre.
12. A copy of a death certificate for the applicant's father issued on February 20, 1998 by St. Ann's Medical Clinic, Benin City, [Nigeria] which indicates that [REDACTED] died from complications of diabetes.
13. A copy of a birth certificate issued in Houston, Texas which indicates that on June 13, 1997, [REDACTED] gave birth to the applicant's son, [REDACTED]. This office notes that at his October 29, 2002 LIFE Legalization interview the applicant testified that his wife Florence had never entered the United States, and that during the years which followed June 1996 the applicant was married to [REDACTED].
14. A copy of a birth certificate issued in Houston, Texas which indicates that on April 20, 1998 [REDACTED] gave birth to the applicant's son, [REDACTED].
15. The affidavit of the applicant dated February 18, 2005 which attests that the applicant first arrived in the United States during February 1981. It also attests that during 1983 for "up to 3 months (90 days)" the applicant was outside the United States, and that because of his father's failing health he remained in Nigeria and was not able to return to the United States immediately. It attests further that during 1988, the applicant was outside the United States for a period "not exceeding 2 months (60 days)" because of his father's failing health. The affidavit also attests that the applicant visited Mexico for two weeks during 1987.
16. The Form I-687, Application for Status as a Temporary Resident, which the applicant signed under penalty of perjury on March 29, 1995. At Item #16 of this form, the applicant indicated that he first entered the United States during June 1981. At Item #33, where the applicant was to list all of his residences since his first entry into the United States, he indicated that he first began residing in the United States during June 1981. At Item #35, where the applicant was to list all his absences from the United States since his initial entry, he specified that he departed the United States during May 1983 and re-entered during May

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<sup>10</sup> The notes also indicate that [REDACTED] was admitted for three days and discharged on February 19, 1983. This office can find no explanation in the record for this apparent inconsistency in these notes. For purposes of this analysis, this office does not draw any negative inference from this particular inconsistency.

1983; that he departed during June 1987 and re-entered during June 1987; and that he departed during May 1988 and re-entered during May 1988.

17. The Form for Determination of Class Membership in *INS v. Reno* which was signed by the applicant under penalty of perjury on March 29, 1995. At Item #6, the applicant stated that he first entered the United States during June 1981. At Item #9, where the applicant was to provide information regarding each trip abroad, the applicant stated that he departed the United States during May 1983 to visit his family and re-entered during May 1983; that he departed the United States during June 1987 to vacation in Mexico and re-entered during June 1987; and that he departed during May 1988 to visit his family and re-entered during May 1988.
18. On October 29, 2002, the applicant testified before a CIS officer in Houston, Texas that he departed the United States for Nigeria during 1983 for two to three months, and that he departed the United States for Nigeria during 1988 for two months. He also testified that he divorced his wife [REDACTED] during 1993, and that she had never entered the United States. However, the applicant also submitted birth certificates into the record which indicate that [REDACTED] gave birth to one of the applicant's children in Texas in 1997 and to a second child of his in Texas during 1998.
19. On September 30, 2004, the applicant testified before a CIS officer in Houston, Texas that he could not recall why he had departed the United States during 1983, and regarding his 1988 departure, that he could recall that, at that time, his father may have been ill and that he had to resolve some property problems.

There is no other evidence in the record relevant to the applicant's claim that he resided continuously in the United States during the statutory period.

On October 29, 2002, the director issued a request for further documentation such as evidence of the applicant's continuous residence in the United States during 1981 through 1988, as well as original and notarized affidavits, and notarized proof of identity for each of his affiants. After receiving documents from the applicant, the director again requested the same documents on March 11, 2003, and explained to the applicant that he had not submitted the documents which the director had requested.

On October 8, 2004, the director issued a Notice of Intent to Deny (NOID). In the NOID, the director indicated that he intended to deny the application because the applicant had testified that during both 1983 and 1988 he was outside the United States more than 45 days, but the record did not support the claim that he was not able to return to the United States during the 45 day period due to emergent reasons relating to his father's failing health. The director also pointed to inconsistencies in the record such as the fact that on the Form I-687, the applicant stated that each time that he departed the United States in 1983, 1987 and 1988, he was outside the United States for no more than one month. In addition, the director indicated that the applicant had failed to provide any contemporaneous, independent, primary evidence of having continuously resided in the United States during 1981 through 1988. The director also pointed out that the applicant's wife failed to acknowledge in her affidavits that she was married to the applicant. The director determined that the applicant had failed to demonstrate that he had resided continuously in the United States from some date

before January 1, 1982 through May 4, 1988, and that he was continuously physically present in the United States from November 6, 1986 through May 4, 1988.

In his November 15, 2004 rebuttal to the NOID, the applicant submitted and resubmitted several of the documents described earlier.

On January 24, 2005, the director denied the application based on the reasons set out in the NOID.

On appeal, the applicant through counsel indicates that he did maintain continuous unlawful residence in the United States throughout the statutory period, and that on two occasions he was not able to return to the United States within 45 days of his departure due to emergent reasons related to his father's failing health. Counsel resubmitted several of the documents described earlier.

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.<sup>11</sup>

First, the applicant stated on the Form for Determination of Class Membership in *INS v. Reno* and the Form I-687, both of which he signed under penalty of perjury on March 29, 1995, that he first entered the United States during June 1981. However, during his October 29, 2002 LIFE Legalization interview, the applicant testified that he first entered the United States during February 1981. He also attested to having first entered the United States during February 1981 in his affidavit dated February 18, 2005. In addition, as pointed out by the director in the NOID, the applicant specified on the Form I-687 that after he departed the United States during 1983, 1987 and 1988, he returned to this country within the same month. He provided this same information on the Form for Determination of Class Membership in *INS v. Reno*. Yet, during his October 29, 2002 LIFE Legalization interview, the applicant testified that during 1983 and 1988, he was outside the United States for periods which exceeded 45 days. He attested to the same in his affidavit dated February 18, 2005. Finally, during his September 30, 2004 LIFE Legalization re-interview, the applicant testified that he could not recall the reason for his departure in 1983, and he explained that in 1988 he may have exited the United States because his father was ill and because he needed to resolve some problems with his property. Yet, in the applicant's affidavit dated February 18, 2005, and in the rebuttal to the NOID received on November 15, 2004, the applicant stated unequivocally that he was not able to return to the United States within 45 days of his departure in 1983 and 1988 due to emergent reasons created by his father's failing health. The applicant even submitted, with his rebuttal and on appeal, hospital notes which purport to list the various forms of medical treatment that the applicant's father had to undergo during 1983 and 1988 in Nigeria.

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<sup>11</sup> 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).

These inconsistencies in the record cast 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).

The applicant failed to provide any contemporaneous evidence that might be considered independent, objective evidence of his having resided in the United States from a date prior to January 1, 1982 and throughout the statutory period.

This office also finds that the various affidavits and statements in the record which purport to substantiate the applicant's residence in the United States just before and 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 a continuous unlawful residence in the United States from a date prior to January 1, 1982 through May 4, 1988, and that these affidavits and statements do not have probative value in this matter.

There is no other evidence in the record to support the applicant's claim that he entered the United States prior to January 1, 1982 and that he maintained continuance residence in this country in unlawful status throughout the statutory period.

Counsel's assertion that the application should be approved based on overriding family unity concerns is not persuasive. 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).

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, the applicant was twice convicted for driving with a suspended license<sup>12</sup> in the Harris County District Court in Houston, Texas. These two misdemeanor convictions do 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.

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<sup>12</sup> He was convicted on April 2, 2001 and again on June 27, 2002, (Case Nos. [REDACTED] and [REDACTED], respectively).