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[Redacted]

FILE: [Redacted]  
MSC 02 001 64179

Office: LOS ANGELES, CA

Date: JUL 02 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. 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.

The regulations at 8 C.F.R. § 245a.14 provide an illustrative list of documents that an applicant may submit to establish that he or she filed a written claim for class membership before October 1, 2000, which includes the Form I-687, Application for Status as a Temporary Resident.

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.<sup>1</sup>

Here, the submitted evidence is relevant, probative and credible.

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<sup>1</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).

On or about June 5, 1991, the applicant applied for class membership in a legalization class-action lawsuit and submitted the Form I-687. On October 1, 2001, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status.

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. A copy of the applicant's California Driver License and a copy of his California Identification Card, each bearing the number [REDACTED] and the following addresses: [REDACTED] Los Angeles, California 90002 and [REDACTED] Los Angeles, California, respectively. The driver license displays an issuance date of May 24, 1999. The identification card displays an issuance date of July 30, 1987.
2. A copy of a listing that provides information regarding how to discern when California Driver Licenses were initially issued by looking to the number assigned the driver license. The list covers the years 1944 through 1997. The list includes explanatory notes that indicate that California Identification Cards and California Driver Licenses follow the same numbering system, and that if an individual replaces, for example, the identification card with the driver license, the new card will be assigned the number of the original card issued to that individual. The listing indicates that the State of California must have initially issued the applicant a driver license or identification card bearing the number [REDACTED] during 1981.
3. An employment verification letter dated July 19, 1988 on Mid-City Iron and Metal Corporation, 2104 East Fifteenth Street, Los Angeles, California 90021 letterhead stationery. The letter is signed by [REDACTED], Vice-President of Mid-City Iron and Metal Corporation and states that the applicant was employed as a sub-contractor for Mid-City Iron and Metal Corporation from December 1981 through the date that letter was signed.
4. The affidavit of [REDACTED] a metal cutter, residing at [REDACTED] Maywood, California dated August 7, 1993 in which the affiant attested that he had worked together with the applicant on a daily basis at [REDACTED], Los Angeles, California 90021 from December 1981 through the date that affidavit was signed. He attested that he first met the applicant when they began working together in December 1981 and that they had become good friends. He also attested that he was willing to personally verify the information in the affidavit. He provided his telephone number in addition to his address.
5. The affidavit of [REDACTED] of [REDACTED], Van Nuys, California dated August 14, 1993 in which the affiant attested that he had served as the applicant's direct supervisor from December 1981 through the date that affidavit was signed. He attested that he has personal knowledge that the applicant had resided continuously in the United States since December 1981. He also attested that he was willing to personally verify the information included in the affidavit and he provided his telephone number in addition to his address.

6. Copies of over 45 envelopes postmarked and addressed in a manner which indicates that the applicant either received these letters at an address in California or sent them from an address in California during the statutory period, beginning in October 1981 and continuing in regular intervals through the end of the statutory period.<sup>2</sup>
7. An employment verification letter dated June 3, 1988 on [REDACTED] La Verne, California 91750 letterhead stationery.<sup>3</sup> The letter is signed by [REDACTED], President of La Verne Nursery and states that [REDACTED] worked for his company from March 24, 1981 through May 12, 1981. Mr. [REDACTED] also stated that it was his understanding that [REDACTED] real name is [REDACTED].
8. A second employment verification letter dated July 5, 2001 on La Verne Nursery, Inc. letterhead stationery.<sup>4</sup> The letter is signed by [REDACTED], President of La Verne Nursery and states that [REDACTED] worked for his company from March 24, 1981 through May 12, 1981. Mr. [REDACTED] also stated that it was his understanding that [REDACTED] real name is [REDACTED].
9. The affidavit of [REDACTED] of [REDACTED], El Monte, California dated October 9, 1993 in which the affiant attested that he had personal knowledge that the applicant had resided continuously in the United States beginning in February 1981. He attested that the applicant resided with him from December 1981 through 1988. He also attested that during 1988, he moved but the applicant continued to reside in the same apartment. He attested that he was willing to personally verify the information in the affidavit and provided his telephone number in addition to his address. He attached a copy of his California Driver License. The affiant listed his address in California at the time the affidavit was executed, but failed to list the address at which he resided with the applicant.
10. Copies of over 60 rent receipts issued on a monthly basis to [REDACTED] during the statutory period. The receipts do not list the full address or building number of [REDACTED] apartment building. The receipts only indicate that [REDACTED] occupied apartment number [REDACTED] in his building.
11. The affidavit dated June 5, 1993 of [REDACTED] of [REDACTED] Baldwin Park, California 91706 on which the affiant attested that the applicant is his nephew. He also attested that when the applicant arrived in the United States in 1981, he resided with the affiant. He did not state how long the affiant resided with him or at what address. In

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<sup>2</sup> The record indicates that the applicant presented the original envelopes for the CIS officer to examine at the LIFE legalization interview and the officer returned the envelopes.

<sup>3</sup> Listed here is the nursery's mailing address. The letterhead also includes the address of the nursery itself: [REDACTED], San Dimas, California 91773.

<sup>4</sup> By 2001, the letterhead had been modified to include a logo, a fax number and an "800" telephone number. However, the addresses and main telephone number for the nursery remained the same on the updated letterhead stationery.

addition, the affiant attested that from February 1981 through June 1981, the applicant resided in Pomona, California; from June 1981 through December 1981, he resided in Anaheim, California; from December 1981 through June 1992, he resided in Los Angeles, California; and from June 1992 through the date the affidavit was signed, the applicant resided in Baldwin Park, California.

12. A statement of [REDACTED] dated August 25, 2001 in which [REDACTED] indicated that he had personal knowledge that the applicant had been in the United States since 1981. In this statement, Mr. [REDACTED] described himself as a friend of the applicant's family. Mr. [REDACTED] also stated that: from 1981 through 1992, the applicant resided in Los Angeles, California;<sup>5</sup> from 1992 through 1995, the applicant resided in Baldwin Park, California; from 1995 through 1999, the applicant resided at [REDACTED] Ontario, California; from 1999 through 2000, the applicant resided at [REDACTED], Los California; and that from 2000 until the date that form was signed, the applicant resided at [REDACTED], Los Angeles, California. In the statement, Mr. [REDACTED] listed his address as [REDACTED], Ontario, California and stated that if called upon, he could testify based on first-hand knowledge that the preceding information in his statement is true.
13. The Form I-687 which the applicant signed under penalty of perjury on June 5, 1993 which states that the applicant first entered the United States on February 7, 1981. This form also lists these addresses for the applicant: December 1981 through June 1992: [REDACTED] Los Angeles, California; and June 1992 through the date this form was signed: [REDACTED] Baldwin Park, California. Regarding the applicant's past employment, the form states that beginning in December 1981 through the date that form was signed, the applicant was employed by Mid-City Iron & Metal Corporation, 2104 E. 15<sup>th</sup> Street, Los Angeles, California 90021 as a machine operator.

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 referred the applicant's asylum application to the Executive Office for Immigration Review, which was returned as undeliverable; a copy of the Immigration Judge's decision dated January 28, 1999 in which Judge Ohata ordered the applicant removed in *absentia*.<sup>6</sup>

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<sup>5</sup> In 2001, [REDACTED] failed to include the applicant's earlier residences in 1981 in Pomona and Anaheim which he listed in his 1993 affidavit. The AAO finds that these minor omissions are not material, especially given that the applicant's December 1981 through June 1992 Los Angeles address covers the entire statutory period and given that the applicant only resided in Pomona and Anaheim for a few months each.

<sup>6</sup> It is noted that, if the director finds that the applicant is otherwise eligible for benefits under the LIFE Act, the director must determine whether the applicant is inadmissible based on this removal order, and, if so, whether he qualifies for a waiver of inadmissibility and whether he needs to file the Form I-690, Application for Waiver of Grounds of Excludability Under Sections 245A or 210 of the Immigration and Nationality Act.

On April 26, 2004, the district 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. Specifically, the director indicated that the application might be denied because the applicant failed to provide contemporaneous evidence to corroborate the affidavits and statements in the record. As noted earlier, an applicant is not required to provide contemporaneous evidence to support a claim of continuous residence in the United States during the statutory period. *See Matter of E-M-*, 20 I&N Dec. 77, 82-83 (Comm. 1989). Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence during the statutory period. *See Id.* Thus, this point in the NOID is withdrawn. The director also indicated that some of the addresses listed for the applicant on copies of envelopes submitted into the record did not match the address which the applicant listed for himself on the Form I-687 as being his address during the statutory period.

In response, the applicant submitted a statement explaining that the Form I-687 includes a typographical error in that it lists the applicant's address during the statutory period as [REDACTED], instead of [REDACTED], his actual address. As objective, independent evidence that his actual address was [REDACTED], which is the [REDACTED] address listed on the envelopes in the record post-marked during the statutory period, the applicant included a copy of his California Identification Card issued during the statutory period that lists his address as [REDACTED]. The applicant also submitted rent receipts which indicate that [REDACTED], the affiant who claimed to have been the applicant's roommate during the statutory period, paid rent throughout the statutory period. However, the receipts do not list an address. They only list an apartment number. Also, the receipts do not include the applicant's name.

On June 17, 2004, the director denied the application for the reasons set out in the NOID.

On appeal, counsel submitted a brief dated July 15, 2004 and additional evidence to substantiate the applicant's claim that he resided continuously in the United States during the statutory period.

In his brief, counsel suggested that under 8 C.F.R. § 245a.2(t)(3) information from the Form I-687 may not be used in this proceeding, but may only be used when adjudicating a request for temporary residence. This assertion is not persuasive. The Form I-687 represents evidence that the applicant has fulfilled the LIFE legalization application requirement that the applicant apply for class membership by the October 1, 2000 deadline. *See* 8 C.F.R. §§ 245a.10 and 245a.14. As such, the Form I-687 forms an integral part of the applicant's LIFE legalization application and information from that form may be used in this proceeding.

On appeal, counsel also suggested that the director had an obligation to include in the notice of decision specific details of what she found lacking in the material submitted in response to the NOID. This assertion is not persuasive. 8 C.F.R. § 245a.20(a)(2) is the controlling regulation in this matter, and it specifies that the director must notify the applicant of her intent to deny and her basis for the proposed denial. It also states that the director must consider all relevant evidence in the record prior to issuing a final decision. *See Id.* The director did identify the bases for her proposed denial in the NOID, and the record indicates that she considered all the evidence including that submitted on rebuttal before issuing the final decision. As stated in the notice of decision, the director denied that application for the reasons set out in the NOID.

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 evidence to substantiate that the State of California first issued an identification card or driver license to him during 1981. He submitted copies of over 40 envelopes which were either sent by him or to him in the United States, post-marked with dates that fall in regular intervals throughout the statutory period. He submitted an employment verification letter dated July 19, 1988 on Mid-City Iron and Metal Corporation letterhead stationery which confirms that he was employed as a sub-contractor for Mid-City Iron and Metal from December 1981 through the date that letter was signed. He submitted the affidavit of [REDACTED], a metal cutter, dated August 7, 1993 in which the affiant attested that he had worked together with the applicant on a daily basis at [Mid-City Iron and Metal] 2104 E. 15<sup>th</sup> Street, Los Angeles, California 90021 from December 1981 through the date that affidavit was signed. The applicant also submitted the affidavit of [REDACTED] dated August 14, 1993 in which the affiant attested that he had served as the applicant’s direct supervisor from December 1981 through the date that affidavit was signed. In addition, the applicant submitted the affidavit of [REDACTED] in which the affiant attested that the applicant resided with him from December 1981 through 1988.

The AAO finds that the independent, objective evidence in the record that the applicant’s building number on [REDACTED] was [REDACTED] not [REDACTED] namely a copy of the applicant’s California driver license issued during the statutory period which lists the applicant’s address as [REDACTED] Los Angeles, California is sufficient to support his claim that the building number [REDACTED] which appears on the Form I-687 is only a typographical error.

The AAO would also note that the Form I-687 confirms that the applicant entered the United States during February 1981. Yet, the applicant did not list his addresses back to February 1981 on that form. Instead, the applicant began his address list with his December [REDACTED] Los Angeles address. The AAO does not find this minor omission of his earlier addresses material, as suggested by the director in the NOID, especially given that the addresses listed are sufficient to cover the entire statutory period. Also, one of the affiants did specify that the applicant lived in Pomona, California for his first three or four months in the United States and in Anaheim, California during the next five or six months of 1981, and copies of certain envelopes submitted into the record serve to substantiate, for instance, that the applicant resided in Anaheim, California in October 1981. The applicant also did not include that from March 24, 1981 until May 12, 1981, he worked for La Verne Nursery, Inc. under the alias [REDACTED], when listing his employment in the United States. The AAO does not find this omission material, especially given that the employment which he did list, that of machine operator, Mid-City Iron & Metal Corp., Los Angeles, California, December 1981 through the date the Form I-687 was signed, covers the entire statutory period. Further, this employment as a machine operator is well documented for the record. The AAO also finds that this omission is not material to his claim because he worked at La Verne Nursery for such a brief period and because he apparently has no documentation that [REDACTED] was, in fact, his alias.

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. On appeal, the applicant has overcome the bases for denial set forth by the director.

Court documents in the record establish that on April 13, 1999, the applicant was convicted under California Vehicle Code 23152(A) of the following misdemeanor: driving a vehicle under the influence of alcoholic beverages or drugs, or under the combined influence of alcoholic beverages or drugs.<sup>7</sup> The applicant was made to serve three days in the Los Angeles County Jail; to complete a three month alcohol and drug education and counseling program designed for first offenders; to pay certain fines; and to complete three years of summary probation. This single misdemeanor conviction does not affect the applicant's eligibility for the benefit sought in this matter.

**ORDER:** The appeal is sustained. The director shall continue the adjudication of the application for permanent resident status.

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<sup>7</sup> On March 26, 2003, the Los Angeles County Superior Court expunged this conviction on the applicant's behalf. The expungement of an alien's misdemeanor conviction does not eliminate the immigration consequences of that conviction, as a general rule. See *Ramirez-Castro v. INS*, 287 F.3d 1172, 1173 (9<sup>th</sup> Cir. 2002).