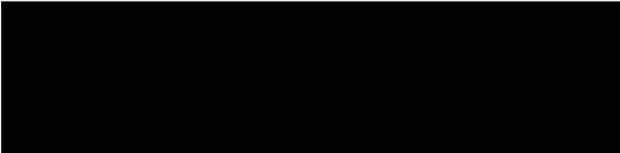


**PUBLIC COPY**  
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

L2



FILE: [Redacted]  
MSC 02 109 61909

Office: MIAMI, FLORIDA

Date: JUN 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:



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

The director found that the affidavits which the applicant submitted to demonstrate his residence in the United States from a date prior to January 1, 1982 through May 4, 1988 were not sufficient to establish continuous residence. Therefore, the director denied the application.

On appeal, counsel asserted that the record did include sufficient evidence to establish that the applicant had resided continuously in the United States in an unlawful status throughout the entire statutory period. Counsel also submitted evidence of the applicant's continuous residence in the United States during the statutory period.

During the adjudication of the appeal, adverse evidence came to light of which the applicant had not been notified and to which he had not yet had the opportunity to respond. Thus, on April 22, 2008, this office notified the applicant of this derogatory information and afforded him an opportunity to rebut the information which is discussed below and to present information on his own behalf.

The applicant provided a response to the April 22, 2008 Notice of Derogatory Information on May 22, 2008. That response consisted of: the applicant's own six page statement in which he attempted to reconcile the discrepancies in the record with various explanations; the affidavit of [REDACTED] dated May 8, 2008; a photocopy of a Canadian coin that was issued during the statutory period and which the applicant stated he had obtained while in Canada prior to entering the United States in 1981; a photocopy of a 45 rpm record that was apparently issued in the United States during 1983 which the applicant claimed to have obtained while residing in this country during the statutory period; and an employment verification letter dated May 21, 2008 written on the State of Florida Department of Health letterhead stationery which indicates that the applicant has been employed by the Florida Department of Health since approximately 2003 and which commends the applicant's character.

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>

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).*

---

<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).

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).

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. *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 "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. *Id.* at 79-80. 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 or applicant 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, 431 (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, to deny the application or petition.

On or near August 17, 1990, 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 January 17, 2002, he filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

On June 24, 2004, the director issued a notice of intent to deny (NOID) in which he indicated that he intended to deny the application because the applicant had not established that he had resided continuously in the United States during the statutory period.

The director indicated that the affidavits in the record were not sufficient to establish continuous residence in the United States because they were not corroborated by contemporaneous evidence. This point in the NOID is withdrawn. CIS must consider affidavits and determine the extent of their probative value. That is, an applicant is not required in all cases to present contemporaneous evidence of continuous residence. *See Matter of E-M-*, 20 I&N Dec. 77 at 82-83. Affidavits which are consistent and verifiable may be sufficient to demonstrate continuous residence. *See Id.* Affidavits that have been properly attested to may be given more weight than a letter or statement. *Id.* Yet, when 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 specific affidavits provided and the other evidence of record are discussed later in this analysis.

On September 27, 2005, the director issued a Decision on Application for Status as Permanent Resident in which he denied the application based on the reasons set forth in the NOID.

On October 31, 2005, the Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO), in this matter was received by the District Office, Miami, Florida. On the Form I-290B, counsel indicated that he would file a brief or additional evidence within thirty days.

In his brief dated November 27, 2005, counsel asserted that the record did include evidence which established that the applicant had resided continuously in the United States in an unlawful status during the statutory period. Counsel also submitted additional evidence of the applicant's continuous residence in the United States during the statutory period.

At issue in this proceeding is whether the applicant is able to establish that he resided continuously in the United States from some date prior to January 1, 1982 through May 4, 1988. Here, the applicant has not met that burden.

As stated in the April 22, 2008 Notice of Derogatory Information, the record includes the following adverse or inconsistent evidence regarding whether the applicant resided in the United States during the statutory period.

1. The applicant's affidavit dated August 15, 1990 on which he attested that he had entered the United States without inspection during November 1981.

2. The Form I-687 submitted in connection with the applicant's application for status as a temporary resident filed pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), and signed by the applicant on October 24, 2005. On this form, the applicant indicated at items 21 through 29 that he had entered the United States as a nonimmigrant, B-2, visitor for pleasure, prior to January 1, 1982. He also stated that he had violated his nonimmigrant status prior to January 1, 1982.
3. The applicant's statement dated November 14, 2006 submitted in conjunction with his appeal of a denial of his application filed under the CSS/Newman Settlement Agreements on which he stated that he entered the United States as a tourist during November 1981.
4. The brief dated July 12, 2004 submitted in response to the NOID issued in relation to the present matter on which previous counsel stated that the applicant entered the United States without inspection during November 1981.
5. In the brief dated July 12, 2004, previous counsel also stated that the applicant departed Puerto Rico during May 1984 and then re-entered the United States using a B-2 nonimmigrant visa during June 1984. He stated that then in August 1984, the applicant exited the United States and then re-entered at New York as a B-2 nonimmigrant, also during August 1984.
6. The Form I-687 signed by the applicant on August 14, 1990 on which he stated at item 35 that he had only been absent from the United States on two occasions **between January 1, 1982 and the date that he signed this form.** The applicant specified that he was absent from the United States to tend to a family emergency in Trinidad from May 1984 through June 1984, and that he was absent from April 1990 through May 1990 to visit your family in Trinidad.
7. The Form I-687 signed by the applicant on October 24, 2005 on which he stated at item 32 that he had departed the United States on only two occasions between January 1, 1982 and the date that he signed this form. He specified that he had visited his family in Trinidad and Tobago from May 1984 through June 1984 and from April 1990 through May 1990.
8. In the brief dated July 12, 2004, previous counsel also indicated that when the applicant requested a nonimmigrant B-2 visa in 1984, he made a material misrepresentation when he withheld from U.S. immigration officials that he had on a previous occasion entered the United States without inspection and that he had previously resided in this country without legal authorization. Counsel indicated that

the applicant made such misrepresentations in order to obtain a visa to enter the United States.

9. The applicant's statement dated November 14, 2006 on which he stated that he entered the United States at New York as a tourist during November 1981, and that he remained in New York for approximately one month.
10. The Forms I-687 which the applicant signed and dated on August 14, 1990 and October 24, 2005, respectively, on which he stated that his first address in the United States was in Puerto Rico, not in New York, and that he began residing in Puerto Rico in November 1981.
11. The affidavit of [REDACTED] dated March 8, 2004 on which the affiant attested that the applicant began residing in the United States during November 1981, and that the first time that he exited the United States was in 1990 when he returned to Trinidad to visit his family. However, on this same document, the affiant also attested that the applicant told him that his application for residence was denied in 1987 "based on the fact that he had left the United States in 1984 and reentered legally."
12. The affidavit of [REDACTED] dated March 8, 2004 on which the affiant attested that the first time that the applicant exited the United States was in 1990. However, on this same document, the affiant also attested that the applicant told her that his application for residence was denied in 1987 "based on the fact that he had left the United States in 1984 and reentered legally."
13. The statement of [REDACTED] which is not dated on which she stated that the first time that the applicant exited the United States was in 1990. However, on this same document, she stated that the applicant told her that his application for residence was denied in 1987 "based on the fact that he had left the United States in 1984 and reentered legally."
14. The affidavit of the applicant's sister, [REDACTED], dated February 21, 2005 on which the affiant attested that the applicant resided continuously in the United States from November 1981 onwards, except for a visit that he made to Trinidad and Tobago in April 1990 to visit his family.
15. The affidavit of the applicant's sister, [REDACTED] dated February 21, 2005 on which the affiant attested that the applicant had moved to New York in 1984 to work as a deliveryman.
16. The Form I-687 signed and dated by the applicant on August 14, 1990 on which he stated at item 36, where he was to list all employment in the United States since his first entry, that from 1981 through the date that he signed that form that he was "self-employed" as a painter.

17. The Form I-687 signed and dated by the applicant on October 24, 2005 on which he indicated at item 33, where he was to list all employment in the United States dating back to January 1, 1982, that he first began working in the United States during September 1990.

When the applicant completed an affidavit to submit with the Form I-687 during 1990, he attested that he had entered the United States without inspection during November 1981. The brief in the record dated July 12, 2004 also states that the applicant entered the United States without inspection during November 1981. However, on his November 14, 2006 statement in the record submitted in conjunction with an application filed under the CSS/Newman Settlement Agreements, the applicant stated that he entered the United States as a tourist in November 1981. Similarly, on the Form I-687 that he submitted in conjunction with an application filed under the CSS/Newman Settlement Agreements, the applicant stated that he entered the United States as a nonimmigrant, B-2, visitor for pleasure, prior to January 1, 1982, and that he violated that nonimmigrant status prior to January 1, 1982.

Also, on the Forms I-687 which the applicant signed on August 14, 1990 and October 24, 2005, he stated that subsequent to January 1, 1982 he was outside the United States twice, once from May 1984 through June 1984, and once from April 1990 through May 1990. However, in the brief in the record dated July 12, 2004, previous counsel stated that the applicant was outside the United States from May 1984 through June 1984 and during August 1984.

On the Form I-687 which the applicant signed on August 14, 1990, he stated that from January 1, 1982 through the date that he signed that form, he was self-employed as a painter. Yet, in the affidavit dated February 21, 2005, the applicant's sister, [REDACTED] attested that beginning in 1984, the applicant was employed as a deliveryman. On the Form I-687 which the applicant signed on October 24, 2005, where he was to list all his employment in the United States dating back to January 1, 1982, he stated that he first began working in the United States during September 1990.

These discrepancies in the record cast doubt on the authenticity of the applicant's statements which indicate that he entered the United States prior to January 1, 1982 and that he was employed in the United States during the period just prior to January 1, 1982 and through May 4, 1988, as well as on the authenticity of the rest of the evidence of record. This in turn casts doubt on the applicant's claim that he resided continuously in the United States throughout the statutory period.

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. In response to the April 22, 2008 Notice of Derogatory Information and throughout these proceedings, the

applicant has failed to provide contemporaneous evidence that might be considered independent, objective evidence of his having resided in the United States throughout the statutory period.

This office also finds that the various statements and affidavits in the record which purport to substantiate the applicant's 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 during the statutory period, and that these documents are not probative 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, he is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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