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U.S. Citizenship  
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[Redacted]

FILE:

[Redacted]

Office: BALTIMORE, MARYLAND

Date:

**MAY 01 2008**

MSC 02 234 60970

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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, Baltimore, Maryland, 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 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).

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 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 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>

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

The record indicates that on or near January 8, 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 May 22, 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 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:

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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).

1. A copy of an envelope addressed to the applicant in New York sent by [REDACTED] The envelope was apparently postmarked in Bangladesh. The year displayed in the postmark appears to have been altered such that it might read 1982, rather than displaying the year originally in the postmark.
2. A copy of an envelope addressed to the applicant in New York sent by [REDACTED] The envelope was apparently postmarked in Bangladesh. The year displayed in the postmark appears to have been altered such that it might read 1987, rather than displaying the year originally in the postmark.
3. A copy of a handwritten receipt dated February 16, 1984 which indicates that the applicant purchased an electronics item from a store named "Alexander's". The receipt does not list an address for this store but it does list an address for the applicant in New York. (There are other copies of handwritten receipts in the record. However, each either has a date after the date of this receipt or has a date that is not legible.)
4. The affidavit of [REDACTED] dated January 7, 1992 on which [REDACTED] attested that he and the applicant resided at [REDACTED] from September 1986 through February 1991. When the Citizenship and Immigration Services (CIS) officer contacted [REDACTED] using the telephone number on this affidavit in order to verify the contents of this document, [REDACTED] indicated that he did not know the applicant.
5. The statement of [REDACTED] dated December 30, 1991 on which [REDACTED] stated that the applicant resided in her home at [REDACTED] from October 1981 through August 1986. In this document, she also stated that she wishes the applicant "every success in life".
6. The statement of [REDACTED] the manager at M & R Travel, Jackson Heights, New York, dated September 20, 1987, and stamped by a notary more than four years later on January 7, 1992. This statement appears to have been typed in the same font as the statement of [REDACTED] [REDACTED] dated December 30, 1991, listed above. It also includes precisely the same statement as used in the previous document wishing the applicant every success in life. However, in this statement, "success" is misspelled as "sucess". [REDACTED] included in his statement that the applicant worked at M & R Travel from November 1981 through August 1987.
7. The statement of [REDACTED] dated June 11, 1993. This statement appears to have been typed in the same font as the statements of [REDACTED] listed above. It also includes precisely the same statement as used in the previous documents wishing the applicant every success in life. In this statement, "success" is again misspelled as "sucess". [REDACTED] included in his statement that he has known the applicant since 1981.
8. The statement of [REDACTED] Vice-President, Islamic Council of America, Inc. dated April 15, 1992 which appears to have been typed in the same font as the two previous statements and which includes the same phrase wishing the applicant "every success in life."

██████████ indicated that beginning in 1981, the applicant prayed at the Islamic Council of America, Inc. mosque at ██████████

Because several documents in the record include the sentence, "I wish him every success in life", each in the same font, and in certain instances with the same misspelling of the word "success" as "sucess", it appears that these documents were written by the same individual on the same typewriter, even though the documents allege to have been written by different parties. It is also noted that almost every affidavit or statement in the record is stamped with the stamp of notary ██████████ of Rockland County, New York. A signature appears near this stamp on each of these documents. However, the signatures for ██████████ are markedly different from one document to the next.

On February 14, 2004, 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 stated that when the CIS officer telephoned ██████████, the affiant who had attested to living in the same apartment as the applicant from September 1986 through February 1991, ██████████ indicated that he did not know the applicant. Also, when the CIS officer telephoned ██████████, who submitted a statement indicating that the applicant resided in her home from October 1981 through August 1986, the officer learned that the telephone number listed on ██████████ statement was that of a car rental business. The director also noted that the applicant had failed to provide copies of rent receipts from the statutory period, copies of leases covering dates during the statutory period or other similar contemporaneous evidence of continuous residence. The director also pointed out that ██████████. ██████████ had not provided any corroborating, documentary evidence of having lived at the addresses listed in their respective statements. In addition, the director indicated that copies of handwritten receipts and envelopes addressed to the applicant in the record were not sufficient to establish continuous residence and continuous physical presence in the United States during the statutory periods. For these reasons and others, the director intended to deny the application.

On rebuttal, the applicant attested that he discussed with ██████████ the fact that the director stated that Mr. ██████████ claimed to not know the applicant when the CIS officer telephoned. ██████████ explained to him that no one claiming to be a CIS officer had telephoned. ██████████ indicated that when telemarketers telephone he may at times give evasive answers, suggesting that ██████████ may have thought the CIS officer was a telemarketer and that is why he claimed to not know of the applicant. The applicant did not provide an updated affidavit from ██████████ attesting to these points, with the request that he be contacted for further information or verification of his statements. The applicant also again failed to provide any corroborating, documentary evidence to establish that ██████████ had lived and/or was currently living at the address which he listed in his affidavit in the record, as the director had indicated he should do in the NOID.

On rebuttal, the applicant also attested that ██████████ had moved and had been given a new telephone number during the years since she wrote her statement in the record, and that is why the contact telephone number on her statement led the CIS officer to a car rental business instead of to ██████████. The applicant did not provide an updated affidavit from ██████████ which included a current contact telephone number and which attested to these points, with the request that she be contacted for further information or verification of her statements. Also, the applicant again did not provide any corroborating, documentary evidence that ██████████ had lived at the address which she listed in her statement in the record, as the director had indicated she should do in the NOID. The applicant did not provide any documentary evidence

to establish that the telephone number listed as contact telephone number on her statement in the record was at one time a telephone number in her name.

The applicant concluded on rebuttal that the evidence in the record taken as a whole demonstrates that he did reside continuously in the United States and was continuously present in this country during the statutory periods.

On February 25, 2005, the director denied the application based on the reasons set out in the NOID. The director also pointed out that the applicant had attempted to overcome all the inconsistencies in the record as set forth in the NOID by submitting only an affidavit of his own and counsel's statements on rebuttal, and that he had failed to provide any independent, documentary evidence to corroborate his statements and counsel's statements. The director emphasized that this was not sufficient to overcome the many discrepancies in the record.

In the denial, the director also notified the applicant that it was his intent to revoke his employment authorization pursuant to 8 C.F.R. § 274a.14(b). He granted the applicant fifteen days during which to submit evidence as to why his employment authorization should not be revoked. The AAO notes that 8 C.F.R. § 274a.14(b) applies only to employment authorization granted pursuant to 8 C.F.R. § 274a.12(c). However, the applicant was granted employment authorization under 8 C.F.R. § 245a.13 based on his pending LIFE legalization application. Thus, the AAO finds that 8 C.F.R. § 274a.14(b) does not apply in this matter. As such, the AAO withdraws the point in the notice to deny where the director notified the applicant of his intent to revoke his employment authorization. The AAO also would emphasize that the regulation at 8 C.F.R. § 245a.20(a)(2) states in relevant part: renewal of employment authorization issued pursuant to § 245a.13 will be granted until a final decision has been rendered on appeal or until the end of the appeal period if no appeal is filed.

In sum, due to the inconsistencies in the evidence of record and the doubt which that cast on the applicant's evidence, the director determined that the applicant had failed to demonstrate by a preponderance of the evidence 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.

On appeal, the applicant asserted that he did maintain continuous unlawful residence and continuous physical presence in the United States throughout the statutory periods. He indicated that the information in the rebuttal was sufficient to establish this, and he asserted that the director failed to comply with 8 C.F.R. § 103.2(b)(16) when he denied the application without identifying what he found lacking in the arguments and explanations presented in the rebuttal. He urged the AAO to sustain the appeal on these grounds.

First, the AAO would note that 8 C.F.R. § 103.2(b)(16) relates to an applicant's right to inspect the record of proceedings. As such, it is unclear to this office in what sense the director's notice to deny could have violated this regulation, as the applicant suggested on appeal.

Regarding the applicant's underlying point that the director had an obligation to state in the notice to deny what he found lacking in the rebuttal, as stated above, the director did identify what he found lacking. The director explained in the notice to deny that in the rebuttal, the applicant had attempted to overcome all the inconsistencies in the record as set forth in the NOID merely by submitting an affidavit of his own and

counsel's brief, and that he had failed to provide any independent, documentary evidence to corroborate his statements and counsel's statements. The director emphasized that this was not sufficient to overcome the discrepancies in the record. This office concurs.

For example, as the director stated in the NOID the applicant submitted an affidavit from [REDACTED] in which [REDACTED] attested that he and the applicant were roommates in the same apartment during a significant portion of the statutory period. Yet, when the CIS officer contacted [REDACTED] to verify the contents of his affidavit, [REDACTED] explained that he did not know the applicant. Such stark discrepancies in the record may not merely be explained away by the applicant with suggestions that [REDACTED] must have thought the CIS officer was a telemarketer.

Such discrepancies in the evidence cast serious doubt on the authenticity of [REDACTED] affidavit and on the authenticity of the rest of the evidence in the record. This in turn casts doubt on the applicant's claims that he resided continuously in the United States and was continuously physically present in the United States during the statutory periods.

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 during the statutory period.

The applicant failed to provide credible, 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, either with his rebuttal or on appeal. As pointed out by the director in the NOID, the few handwritten receipts and copies of postmarked envelopes which the applicant provided, even if they were found credible, are not sufficient on their own to establish *continuous* residence and physical presence in the United States throughout the statutory periods. Also, as noted above, the dates displayed in certain postmarks of the copies of envelopes submitted appear to have been altered so that they might reflect dates that fall within the statutory period. This casts further doubt on the authenticity of all the applicant's evidence of record.

This office also finds that the various statements 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 in an unlawful status from a date prior to January 1, 1982 through May 4, 1988, and that these statements and transcripts 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.

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