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FILE: [Redacted]  
MSC 02 242 61470

Office: BALTIMORE, MARYLAND Date: **MAY 30 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 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).

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

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

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also states that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually

and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence, or if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The absence of contemporaneous evidence is not necessarily fatal to the applicant’s claim of continuous residence in the United States during the statutory period. *See 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 in the United States during the requisite period. Here, the applicant has failed to meet this burden.

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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).

The record indicates that on or near February 21, 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 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 documents that relate to the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988, including:

1. The employment verification letter which is not dated from Moon Construction Co., 1022 Wisconsin Avenue, N.W., Washington, D.C. The letter is printed on light grey paper and the name of the company appears at the top in a large, Gothic-style font. It is signed by Abid Afzal, the owner of Moon Construction Co. and it indicates that from October 1981 through September 1987 the applicant worked first as a construction worker and later as a supervisor with this company. The AAO would note that the applicant was 14 years old in October 1981 and he was 21 in September 1987.
2. The employment verification letter which is not dated from Alpine Construction Co., Inc., 1622 K , N.W., Washington, D.C. The letter is printed on the same light grey paper and the name of the company appears at the top in the same large, Gothic-style font as used in the employment verification letter referred to above in item 1. It is signed by [REDACTED] the Manager of Alpine Construction Co., Inc., and it indicates that from January 1988 through the unspecified date that this letter was written, the applicant worked first as a construction supervisor with this company.
3. The notes from the applicant's May 10, 2005 LIFE legalization interview which indicate that at the interview the applicant initially testified that in 1981 he entered the United States at the border with Canada, and he later testified that in 1981 he entered the United States at the border with Mexico.
4. The notes from the applicant's May 10, 2005 LIFE legalization interview which indicate that at the interview the applicant testified that in September 1987, he left the United States for two weeks and returned in October 1987.
5. The Form I-687 signed by the applicant under penalty of perjury on February 21, 1992. At item 36 of this form, where the applicant was to list his absences from the United States since his first entry, he stated that his only absence was from October 1987 through December 1987, when he was in Pakistan to visit his family.
6. The applicant's affidavit for Determination of Class Membership in the *League of United Latin American Citizens v. INS (LULAC)* lawsuit which the applicant signed under penalty of perjury on February 20, 1992, in which the applicant stated that he departed the United States in October 1987 at New York and then re-entered this country without inspection during December 1987 at California.

On March 27, 2006, 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 pointed out that the applicant initially testified at the May 10, 2005 LIFE legalization interview that when he entered the United States in 1981, he entered without inspection along the Canada/U.S. border. Later in that interview, he testified that when he entered the United States in 1981, he entered without inspection along the Mexico/U.S. border. In addition, the director stated that the Moon Construction and the Alpine Construction undated employment verification letters in the record do not appear to have been written by two different individuals at two different companies. Instead the director indicated that they appear to have been written by one individual because they are on the same light grey paper and they use the same large Gothic-style font in the letterhead of these documents. The director indicated that because of these things these employment verification letters do not appear to be authentic. He added that the Form I-687 indicates that the applicant began working as a construction worker and construction supervisor at the age of 14, an age which is generally considered too young for such work, which calls the applicant's claims of having worked in construction during the statutory period further into question.

In addition, the director explained that the statement of [REDACTED] which is not dated indicates that Mr. [REDACTED] met the applicant in 1985 and the statement of [REDACTED] which is also not dated indicates that Mr. [REDACTED] met the applicant in 1986. However, these statements in the record do not provide further details and as such are not probative.

In the NOID, the director also pointed out that at the May 10, 2005 LIFE legalization interview, the applicant indicated that he exited the United States during the statutory period on one occasion in September 1987 and that he re-entered two weeks later during October 1987. However, the Form I-687 and other supporting documents in the record specify that the applicant exited the United States in October 1987 and did not re-enter until December 1987. The director indicated that because of these discrepancies in the record the applicant had failed to demonstrate that he was never outside the United States for an absence of more than 45 days during the statutory period.

Based on this point and based on the various discrepancies outlined above, the director concluded that the applicant had failed to establish continuous residence in the United States during the statutory period.

For these reasons, the director intended to deny the application.

On rebuttal, counsel submitted the affidavit of [REDACTED] dated April 28, 2006 in which [REDACTED] attested that he met the applicant in New York during 1982, and that the two of them do not see each other often but that they do try to keep in touch. Counsel also submitted a copy of the applicant's marriage certificate and divorce decree as the director had requested. The AAO would note that in the divorce documents the applicant's ex-wife accused him of having beat her during the eight months that the two of them lived together in Pakistan subsequent to their marriage in 1995 and prior to the applicant's departure for the United States.

Counsel indicated that the evidence in the record taken as a whole demonstrates that the applicant did reside continuously in the United States and was continuously physically present in this country during the statutory periods.

On August 21, 2006, the director denied the application based on the reasons set out in the NOID and he emphasized that on rebuttal counsel had failed to address the many discrepancies in the evidence set forth in the NOID.

On appeal, counsel asserted that the applicant had established through affidavits, statements and employment letters in the record that he had resided continuously in the United States throughout the statutory period. Counsel stated that the director's decision to deny was arbitrary and capricious.

The employment verification letters in the record from Moon Construction Co. and from Alpine Construction Co., Inc. are printed on the same light grey paper and the names of the companies appear at the top of both letters in the same large, Gothic-style font. Thus, as noted by the director in the NOID, it appears that these documents were not prepared by two different individuals at two different companies. Instead, it seems that what is most probable is that one person printed both documents. This calls into question the authenticity of the documents. That then calls into question the credibility of the applicant's claim that he supported himself by working in construction in Washington, D.C. during the statutory period. This then calls into question whether the applicant did reside in the United States during the statutory period.

The applicant failed to address this discrepancy in the record on rebuttal or on appeal.

The applicant initially testified at the May 10, 2005 LIFE legalization interview that when he entered the United States in 1981, he entered without inspection along the Canada/U.S. border. Later in that interview, he testified that when he entered the United States in 1981, he entered without inspection along the Mexico/U.S. border. As indicated by the director in the NOID, the applicant's inability to provide a consistent account of where he entered in 1981 calls into question whether the applicant did enter the United States during 1981. This in turn calls into question whether he resided continuously in the United States throughout the entire statutory period.

The applicant failed to address this discrepancy in the record on rebuttal or on appeal.

These discrepancies cast serious doubt on the authenticity of all the evidence submitted. This in turn casts doubt on the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Such inconsistencies in the record may only be overcome through independent, objective evidence of the applicant's claim that he resided continuously in the United States during the statutory period.

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.

The AAO also finds that the various statements in the record which purport to substantiate the applicant's residence in the United States 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

continuous residence in the United States in an unlawful status from a date prior to January 1, 1982 through May 4, 1988, and that these documents do not have probative value in this matter.

The applicant has failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988. Thus, the applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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