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U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK

Date:

OCT 31 2008

MSC 02 096 60576

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. The file has been returned to the National Benefits Center. 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.

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 Director, New York. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he had entered the United States before January 1, 1982, and had continuously resided in unlawful status from then through May 4, 1988.

On appeal, counsel for the applicant submits additional affidavits.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

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 its amenability to verification. See 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 stated 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 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 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.

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the

submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.13(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The record reflects that the applicant filed a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act) in or about February 1990. In connection with that application, the applicant, a native and citizen of Colombia, claimed to have initially entered the United States without inspection through Brownsville, Texas, on July 31, 1981, and to have remained in the United States since that date through the date of the application, other than for a departure to Colombia from June 28, 1987, to July 10, 1987, due to his father's illness.

The applicant filed the current Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on January 14, 2002. At the time of filing this application, the applicant provided documentation that he was admitted in transit through the United States (as a C-1 nonimmigrant) on November 23, 2001, with authorization to depart the United States on or before December 1, 2001. The applicant did not provide photocopies of all pages from his passport, which was issued in Bogota, Colombia, on October 30, 2001.

On July 11, 2007, the director denied the Form I-485. The applicant filed a timely appeal from that decision on July 30, 2007.

The issue in this proceeding is whether the applicant has demonstrated that he continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

In addition to the above-noted applications and documentation, the record reflects that the applicant has submitted the following evidence in an attempt to establish his continuous unlawful residence in the United States during the requisite time period:

1. A Social Security statement, dated November 4, 2003, showing, in part, that the applicant earned wages in the United States from 1984 (\$247) through 1988 (\$27,865).

2. A letter, dated May 7, 1992, from Local [REDACTED], Service Employees International Union AFL-CIO, indicating that the applicant had been employed by Supreme Building Maintenance from an unspecified date in 1984.
3. A letter, dated March 21, 2007, from [REDACTED] of [REDACTED] Auto Repair Shop stating that the applicant worked as a mechanic assistant was employed for a year beginning in August 1981. When a Citizenship and Immigration Services (CIS) officer called [REDACTED], he stated that he did not know which [REDACTED] was being mentioned. On appeal, counsel submits an affidavit, notarized on August 4, 2007, stating that when the CIS officer called, the pronunciation that the officer gave of the applicant's name did not sound like "[REDACTED]"

Based on evidence submitted by the applicant in Nos. 1 and 2 above, it is determined that he has established his presence in the United States since an unspecified date in 1984.

The employment letter provided by [REDACTED], however, does not comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i) in that [REDACTED] did not provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

4. An undated and incompletely notarized affidavit from [REDACTED], stating that the applicant lived with him at his residence in Jackson Heights, New York, from July 30, 1981, until December 1984.

Since the affidavit is not dated and incompletely notarized, it has little value. Also, it is not supported by contemporaneous documentation, such as rent agreement, lease or receipts

5. An affidavit, notarized on March 24, 2007, from [REDACTED] stating that he had reunited with the applicant - a friend from Colombia for over 30 years - in New York in August 1981.
6. A fill-in-the-blank "Affidavit of Witness," dated February 22, 1990, from [REDACTED] of Corona, New York, stating that he had met the applicant at social gatherings in the United States since 1981. An affidavit, notarized on March 26, 2007, from [REDACTED] states that he had known the applicant since August 1981. When a CIS officer contacted [REDACTED] he stated that he had known the applicant for the past 18 or 20 years. When asked when the applicant came to the United States, [REDACTED] stated that he thought the applicant came to the United States in 1985 or 1987. On appeal, counsel submits a letter, dated August 1,

2007, from [REDACTED] stating that he “made an involuntary mistake in the dates” he gave when called by the CIS officer because he “did not clearly understand the question.”

7. An affidavit, notarized on March 26, 2007, from [REDACTED] stating that she had known the applicant since September 1981. When a CIS officer attempted to contact [REDACTED] there was no answer. On appeal, counsel submits a letter, dated July 31, 2007, from [REDACTED] stating that she was working when the CIS officer attempted to contact her.
8. An affidavit, notarized on March 26, 2007, from [REDACTED], stating that she had known the applicant since September 1981. When a CIS officer attempted to contact [REDACTED], there was no answer. On appeal, counsel submits a letter, dated July 31, 2007, from [REDACTED], stating that she was working when the CIS officer attempted to contact her.

The documentation provided by the applicant in Nos. 5 through 8, above, lack specific details as to how the affiants knew the applicant during the requisite time period from 1982 through 1988. None of the affiants provide evidence that they actually resided in New York and are generally vague as to how they date their relationships with the applicant, how often and under what circumstances they had contact with the applicant during the requisite time period, and lack details that would lend credibility to their claims of alleged 26-year relationships with the applicant. It is unclear as to what basis the affiants claim to have direct and personal knowledge of the events and circumstances of the applicant’s residence in the United States. As such, the letters can be afforded only minimal weight as evidence of the applicant’s residence and presence in the United States during the requisite period.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv). The applicant also has not provided documentation (including, for example, money order receipts, children’s birth certificates, bank book transactions, letters of correspondence, or automobile, contract, and insurance documentation) as provided for in 8 C.F.R. § 245a.2(d)(3)(vi). The only documentation provided by the applicant to establish his continuous unlawful residence in the United States from January 1, 1982, through an unspecified date in July 1984 consists solely of third-party affidavits (“other relevant documentation”).

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved

is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Based on the above discussion, the AAO concludes that he has failed to establish, by a preponderance of the evidence, that he maintained **continuous unlawful residence** from prior to January 1, 1981, through May 4, 1988, as required for eligibility for adjustment of status to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

It is noted that the applicant was convicted of Disorderly Conduct, in violation of section 240.20 of the New York Penal Code, on March 16, 1990.

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