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[REDACTED]

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FILE: [REDACTED]
MSC 02 240 67557

Office: CHICAGO

Date: **SEP 26 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. 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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: On May 25, 2006, the District Director, Chicago, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant failed to submit credible documents to establish, by a preponderance of the evidence, that he took up residence in the United States prior to January 1, 1982, and that he resided continuously here in an unlawful status from January 1, 1982, through May 4, 1988. The director noted that the applicant's testimony regarding his addresses in the United States was inconsistent with information contained in the record.

On appeal, counsel for the applicant asserts that the applicant did submit affidavits and other documentation sufficient to establish his continuous residence from January 1982 through the statutory period. Counsel asserts that the director did not consider this documentation, did not follow its own policy for how to review the documentation, and did not give proper weight to the evidence submitted. Counsel submits one previously submitted affidavit and a statement from the applicant.

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 and through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite period, 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 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 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 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.12(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.

A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. See 8 C.F.R. § 245a.14. In this case, the record reflects that the applicant applied for such class membership by submitting a "Form for Determination of Class Membership in *CSS v. Meese* [CSS lawsuit]," accompanied by a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)," filed on February 28, 1990.

On May 28, 2002, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On April 17, 2006, the applicant appeared for an interview based on the application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden, establishing by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true. Upon examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

The applicant has provided the following evidence relating to the requisite period:

Letters and affidavits

- A fill-in-the-blank form notarized on July 19, 2005. The form appears to be a template or example for an affiant to follow, as evidenced by the word "sample" which was inadvertently not removed and which appears in a parenthesis next to the word "Declaration" in the title of the document, as well as other words that

were not removed throughout the document, including “(name of employer),” “(date when applicant first came to the United States),” and, “(explain how the applicant entered the U.S. if you know).”

The form, signed by [REDACTED] first allows the affiant to fill in his or her current address, immigration status, and place of employment. By filling in various blanks, the affiant indicates that he was working at the Hilton Hotel in Chicago when he first met the applicant in 1981. The form allows the affiant to fill in a statement that he or she is aware that the applicant “came to the United States and began living here because _____.” [REDACTED] added “he was my next door neighbor in India (Hyderabad).” [REDACTED] further attests that the applicant lived at [REDACTED] for seven years after he first entered until approximately 1988. [REDACTED] added: “he lived there since he did not know anyone.” This contradicts the information the applicant provided in his Form I-687, where he listed his address from May 1981 to October 1986 as [REDACTED]. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has not explained this inconsistency or submitted evidence pointing to where the truth lies about his place of residence from 1981 to 1986.

Although he filled in a blank indicating the date of the applicant’s initial entry, [REDACTED] fails to indicate any personal knowledge of the applicant’s claimed entry to the United States during that year or of the circumstances of his residence. There is no evidence that the affiant resided in the United States during the requisite period and no details of any relationship that would lend credibility to his statement. Thus, the affidavit, prepared on a duplicate fill-in-the-blank form, can be given minimal weight as evidence of the applicant’s continuous residence in the United States.

For the reasons noted above, this affidavit can be given little evidentiary weight and is of little probative value as evidence of the applicant’s residence and presence in the United States for the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, the affidavit did not include any supporting documentation of the affiant’s presence in the United States during the requisite period.

The record of proceedings contains other documents, including, the applicant’s Illinois Identification Card issued on February 2, 1990, and several envelopes date-stamped in 1989 and 1990. These documents all indicate physical presence after May 4, 1988, and do not address the

applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have first entered the United States without inspection in May 1981, and to have resided for the duration of the requisite period in Chicago. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence he entered into the United States before January 1, 1982, and that he resided continuously in an unlawful status for the requisite period.

Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance on affidavits, which lack relevant details, and the lack of any probative evidence of his entry and residence in the United States from prior to January 1, 1982 through May 4, 1988, the applicant has failed to establish by a preponderance of the evidence that he maintained continuous, unlawful residence in the United States as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act.

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