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U.S. Citizenship
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Services

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[Redacted]

FILE: [Redacted]
MSC 02 247 66141

Office: NEW YORK

Date: JAN 30 2009

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.

John F. Grissom, Acting 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, 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 he had entered the United States before January 1, 1982, and had resided continuously in an unlawful status in the United States from then through May 4, 1988.

On appeal, counsel for the applicant submits a brief statement and additional documentation.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she 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.

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.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.

The applicant filed a Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on June 4, 2002. On August 30, 2007, the director denied the application. The applicant filed a timely appeal from that decision on September 30, 2007.

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 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 an attempt to establish his entry into the United States prior to January 1, 1982, and his continuous unlawful residence in the United States from that date through May 4, 1988, the applicant has provided the following documentation throughout the application process:

Letters from Acquaintances:

1. An affidavit dated July 19, 1989, from [redacted] stating that he is the owner of the [redacted] in Jackson Heights, New York, where the applicant had been a client since **March 1985**.

2. An affidavit dated July 19, 1989, from [REDACTED] stating that he is the proprietor of [REDACTED] in Jackson Heights, New York, were the applicant had been a client since **June 1986**.

The affiants in Nos. 1 and 2, above do not state in detail how they first met the applicant in the United States, or how frequently and under what circumstances they saw the applicant during the requisite period. They provide little information for concluding that they had direct and personal knowledge of the events and circumstances of the applicant's entry and residence in the United States throughout the requisite time period. Furthermore, they only attest to their knowledge of the applicant's presence in the United States since in or after 1985. Therefore, this documentation is of minimal evidentiary weight.

Letters from Employers:

3. A letter dated November 19, 1986, from [REDACTED] Office Manager of [REDACTED] in New York, New York, stating that the applicant worked for the company as an independent contractor earning approximately \$150.00 per week from **February 1980 to April 1981**.
4. Two letters, one un-dated and one dated July 24, 1989, from [REDACTED] of [REDACTED] New York, stating that the applicant cleaned, fixed food, and shopped for her from **May 1981 to July 1984**, at the rate of \$3.00 per hour cash.
5. A letter dated July 26, 1989, from [REDACTED] stating that he is the owner/operator of [REDACTED] in Long Island City, New York, where the applicant had been working independently (in a small space executing his own repairs) since **March 1988**.
6. A notarized letter dated July 28, 1989, from [REDACTED], Manager of [REDACTED] in Brooklyn, New York, stating that the applicant had been employed as a general cleaner, three days a week, four hours a day, since **January 1987**.
7. A letter dated April 7, 1988 from [REDACTED] in New York, New York, stating that the applicant had been employed as a dishwasher earning \$150 per week from **September 1984 to December 1986**.

The employment letters above do not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that they do not provide the applicant's address(es) at the time of employment; identify the exact periods of employment; show periods of layoff, if any; declare whether the information was taken from company and/or personal records; and identify the location of such records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

Rental Documentation:

8. An affidavit dated July 19, 1989, from [REDACTED] stating that the applicant lived in Forest Hills, New York, from December 1979 to March 1980. In a letter dated

August 10, 1989, [REDACTED] states that he provided the applicant and his common-law wife ([REDACTED]) with free room and board in his home in Forest Hills from **December 1979 to March 1980**.

9. An affidavit dated July 19, 1989, from [REDACTED] stating that the applicant lived in Rego Park, New York, from April 1980 to May 1983. In a letter dated August 9, 1989, [REDACTED] states that she rented a room to the applicant and his common-law wife ([REDACTED]) in her home in Rego Park from **March 1980 to May 1983**.
10. An affidavit dated July 19, 1989, from [REDACTED] stating that the applicant lived in Brooklyn, New York, from June 1983 to February 1986. In a letter dated August 10, 1989, [REDACTED] states that he rented a room in his house in Brooklyn to the applicant and his common-law wife ([REDACTED]) from **June 1983 to February 1986**. In a third letter, dated September 24, 2007 reiterates the information previously provided.

None of the rental documentation provided is accompanied by corroborative evidence, such as letters of correspondence received by the applicant at those addresses, to establish that the applicant actually lived at the addresses being attested to.

Other Documentation:

11. A photocopy of a letter dated December 5, 1986, from [REDACTED] Administrative Assistant at [REDACTED] in New York, New York, stating that the and [REDACTED] had a savings account opened in **May 1982**.
12. An undated, un-notarized letter from [REDACTED] of Jackson Heights, New York, stating that the applicant had been a patient since **May 1982**, returning in December 1982, July 1983, February 1984, July 1986, January 1987, November 1987, August 1988, and March 1989. In a letter notarized on September 27, 2007, [REDACTED] reiterates this information.

The letter from [REDACTED] is a photocopy and is not supported by any corroborative documentation, such as bank transaction statements. While the second letter from [REDACTED] establishes that the applicant was present during the dates indicated, it does not establish the applicant's presence in the United States prior to January 1, 1982, or his continuous unlawful residence throughout the requisite time 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)(A) through (F), 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), no hospital or medical records indicating the applicant's presence in the United States prior to May 1982, and no church letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(v). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates,

dated bank book transactions, letters of correspondence, a Social Security card, automobile contract, insurance documentation, tax receipts, insurance policies, or letters according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K).

The record also reflects that when filing a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), in 1989, the applicant indicated that he was never married; had three sons born in Colombia in May 1977, April 1981, and June 1982; and had never left the United States since his entry without inspection on December 16, 1979. On his Form I-485, the applicant indicated that he was married but did not list a spouse or any children on his application. It is also noted that the affiants in Nos. 8 through 10, above, stated that the applicant had a common-law wife from 19979 through 1986.

In a Notice of Intent to Deny (NOID) the Form I-485, mailed to the applicant on July 25, 2007, the director noted that the applicant had children born in Colombia in 1981 and 1982 but that there was no indication that the mother of the children was in the United States prior to their births. The applicant, through counsel, was provided an opportunity to provide additional evidence in response to the NOID. In response counsel failed to address the issue of the applicant's sons' births. On appeal, counsel asserts that the mothers of the applicant's sons were in New York, moved to Colombia to give birth, and that the applicant has "not seen them since that time." No evidence of this assertion, or any further explanation regarding the applicant's marital status throughout the requisite time period or the birth of his sons and the identity of their mothers has been provided.

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

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 documentation submitted, it is concluded that the applicant has failed to establish, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and maintained continuous unlawful residence since such date 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.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.

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