**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
*Office of Administrative Appeals* MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

**identifying data deleted to prevent clearly unwarranted invasion of personal privacy**

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[redacted]

FILE: [redacted] Office: GARDEN CITY Date: APR 1 2 2010
MSC 02 142 60736

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 returned to the National Benefits 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 remanded for further action, you will be contacted.

Elizabeth M'Cormack

Perry Rhew
Chief, Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Garden City, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel reiterates the applicant's claim of residence in this country for the required period and asserts that the applicant had submitted sufficient evidence to demonstrate such claim. Counsel requests a copy of the record of proceedings and indicates a brief would be forthcoming within thirty days of compliance with this request.

The record shows that United States and Citizenship and Immigration Services or USCIS (formerly the Immigration and Naturalization Service or the Service) complied with counsel's request with Control Number NRC2008003642 and mailed a copy of the record to counsel on April 29, 2009. The brief subsequently submitted by counsel has been incorporated into the applicant's appeal.

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. Section 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 periods, is admissible to the United States under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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).

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 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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 regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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.* At 80. 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. *Id.*

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, 431 (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.

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

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Act, on August 24, 1990. At part #33 of this Form I-687 application where applicants were asked to list all residences in the United States since first entry, the preparer of the application indicated that the applicant resided in Chicago, Illinois since entering the United States in December 1981 through the end of the requisite period on May 4, 1988. Furthermore, at part #34 of this Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc., the preparer did not list any information.

Subsequently, the applicant filed his Form I-485 LIFE Act application on February 19, 2002.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted a letter dated October 11, 1982 that contained the letterhead of the Fingerhut

Corporation in St. Cloud, Minnesota and is signed by of the Customer Service Department. The letter is typewritten and referenced a shipment of merchandise that had been purportedly mailed to the applicant by this enterprise. However, the origin and authenticity of the letter can neither be confirmed nor denied as it is not accompanied by any corroborative business records, documents, or receipts to reflect the transaction.

The applicant provided two affidavits signed by as well as single affidavits signed by and Although all of these affiants attested to the applicant's residence in the United States for the period in question or a portion thereof, their testimony was general and vague and lacked sufficient details and verifiable information to corroborate the applicant's residence in this country for the requisite period.

The applicant included a letter of membership containing the letterhead of the in New York, New York, that is signed by who listed his position as president. declared that the applicant was an active member of this organization from December 24, 1981 to March 20, 1982 when he regularly attended prayer services. However, failed to establish the origin of the information to which he was attesting and failed to provide the applicant's address of residence during his affiliation with this organization as required under 8 C.F.R. § 245a.2(d)(3)(v). Moreover, it must be noted that the individual who prepared the applicant's Form I-687 application indicated that the applicant resided in Chicago, Illinois for the entire requisite period and failed to list any affiliation with

The applicant submitted an affidavit signed by who stated that the applicant had been absent from the United States from October 1987 to November 1987. While attested to the applicant's absence from this country in 1987, he failed to provide any other testimony relating to the applicant's residence in the United States for the requisite period.

The applicant provided a letter containing the letterhead of in Bellmore, New York that is signed by " In his letter, Mr. offered the applicant the position of field officer with this enterprise with terms of employment to be negotiated. However, the fact that s position is incorrectly listed as rather than personnel manager brings into question the origin and authenticity of the letter

The director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status for the requisite period. Therefore, the director concluded that the applicant was ineligible to adjust to permanent residence and denied the Form I-485 LIFE Act application on September 27, 2007.

On appeal, counsel asserts that the applicant has submitted sufficient evidence to support his claim of residence in this country for the requisite period. Counsel declares that the director utilized an improper evidentiary standard to evaluate the applicant's supporting documents.

Counsel objects to the director's failure to contact affiants who had provided supporting documents in order to verify their testimony. However, as has been discussed above, the record is absent supporting documents containing specific and verifiable testimony to substantiate the applicant's residence in this country from prior to January 1, 1982. Even if the director utilized a higher evidentiary standard to adjudicate the instant application, it is harmless error because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility and making a determination based upon a preponderance of the evidence as required by the regulations at 8 C.F.R. § 245a.2(d)(5) and 8 C.F.R. § 245a.12(e), as well as the precedent decision reached in *Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989). Counsel fails to put forth any compelling reason that would warrant the verification of documentation that provides neither extensive nor credible information to corroborate the applicant's claim of residence.

The absence of sufficiently detailed supporting documentation and existence of conflicting testimony concerning the applicant's affiliation with , seriously undermines the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. 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. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States for the requisite period by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no probative value and the inconsistent and conflicting testimony contained in the record, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

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