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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
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U.S. Citizenship  
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Services

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FILE:

MSC 02 130 62449

Office: CHARLOTTE

Date: JAN 12 2010

IN RE:

Applicant:

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:

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.

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, Charlotte, North Carolina, and is now before the Administration Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined 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 and, therefore, denied the application.

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 in support of such claim. Counsel requested a copy of the record of proceedings and indicated that a brief would be forthcoming within thirty days of compliance with this request.

The record reflects that the United States Citizenship and Immigration Services or USCIS (formerly the Immigration and Naturalization Service or the Service) attempted to comply with counsel's request, but such request was administratively closed with Control Number NRC2008041516 as failure to comply on August 23, 2009.

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 "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 October 9, 1990. Subsequently, the applicant filed his Form I-485 LIFE Act application on February 7, 2002.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted three affidavits that are signed by [REDACTED] and [REDACTED], respectively. All three affiants testified that they had knowledge that the applicant traveled from Morocco to Canada in April 1981 with the intent to eventually attempt to enter the United States because of work opportunities. The affiants stated that the applicant subsequently called in mid-summer of 1981 and informed them that he was working in a “summer city” and at the end of the summer he would be moving to Washington, D.C. The affiants confirmed that the applicant subsequently lived in the United States on a permanent basis. While the affiants attest to the applicant’s residence in the United States for the period in question, their testimony is general and vague and lacks sufficient details and verifiable information to corroborate the applicant’s residence in this country for the required period. Further, the testimony of all three affiants appears to be based upon what the applicant told them rather than the affiants’ direct knowledge. Moreover, it is noted that [REDACTED] and [REDACTED], have acknowledged that they are respectively, the applicant’s brother, father, and mother. Consequently, the probative value of the testimony of these affiants is limited as they have admitted that they are members of the applicant’s immediate family with a direct interest in the outcome of this proceeding rather than disinterested third party witnesses.

The applicant included an affidavit signed by [REDACTED] who noted that he first met the applicant at a soccer game in Washington, D.C., in June 1986. [REDACTED] declared that he and the applicant became friends and remained in contact even after the applicant subsequently moved to North Carolina on an unspecified date. However, [REDACTED] failed to attest to applicant’s residence in this country from prior to January 1, 1982 up until June 1986. In addition, [REDACTED] testimony relating to the applicant’s residence in the United States after June 1986 is minimally

detailed and lacks direct and specific information to verify the applicant's claim of residence in that portion of the requisite period from June 1986 through May 4, 1988.

The applicant provided original envelopes postmarked October 22, 1983, an indeterminate day in October 1985, and an indeterminate day in October 1987, respectively. Although the envelopes contain Moroccan postage stamps and were represented as having been mailed from Morocco to the applicant in the United States, the authenticity of these postmarks cannot be verified because major portions of these postmarks are so indiscernible that it cannot be determined whether the envelopes had actually been posted and mailed from Morocco.

The applicant submitted a photocopied letter dated April 25, 1984 that contains the letterhead of [REDACTED] in Atlantic City, New Jersey and is signed by [REDACTED]. The letter is addressed to the applicant and invites him to plan a trip to this establishment. However, the origin and authenticity of this letter is questionable as the font type utilized to print the applicant's name and address is visibly and significantly different from the font type utilized in the remainder of the letter.

While the applicant included an original airline ticket and baggage claim that reflected his travel to Morocco, the probative value of this document is limited because the last number of the year printed on the document is obscured.

Counsel's remarks on appeal regarding the sufficiency of evidence the applicant submitted to demonstrate his residence in this country during the period in question have been considered. However, the supporting documents contained in the record do not contain specific and verifiable testimony to substantiate the applicant's claim of residence in the United States for the period in question.

The absence of sufficiently detailed supporting documentation and the questionable nature of evidence cited above seriously undermine 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 questionable nature of evidence 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 eligibility.