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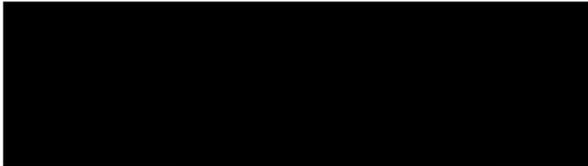
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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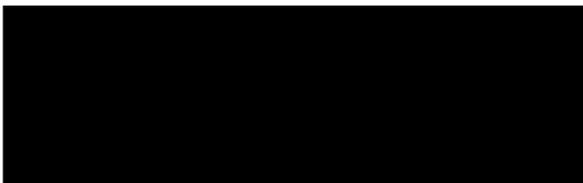
IN RE: Applicant:



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:

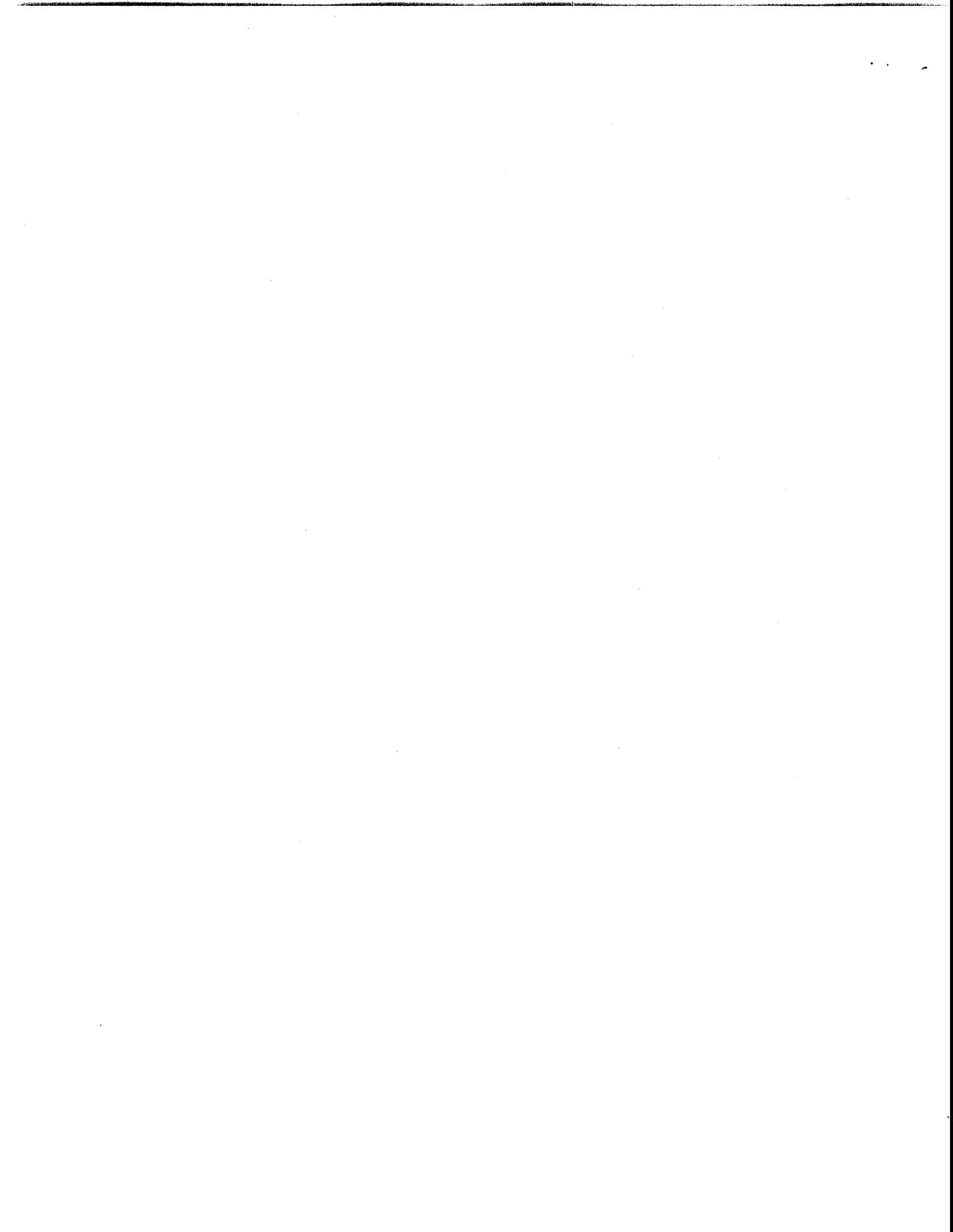


INSTRUCTIONS:

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.



Chief, Administrative Appeals Office



**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director in Miami, Florida. It is now on appeal before the Chief, Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that she entered the United States before January 1, 1982 and was continuously resident in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel asserts that the evidence of record was not properly considered and that the documentation submitted by the applicant establishes her continuous residence in the United States during the requisite time period to be eligible for permanent resident status.

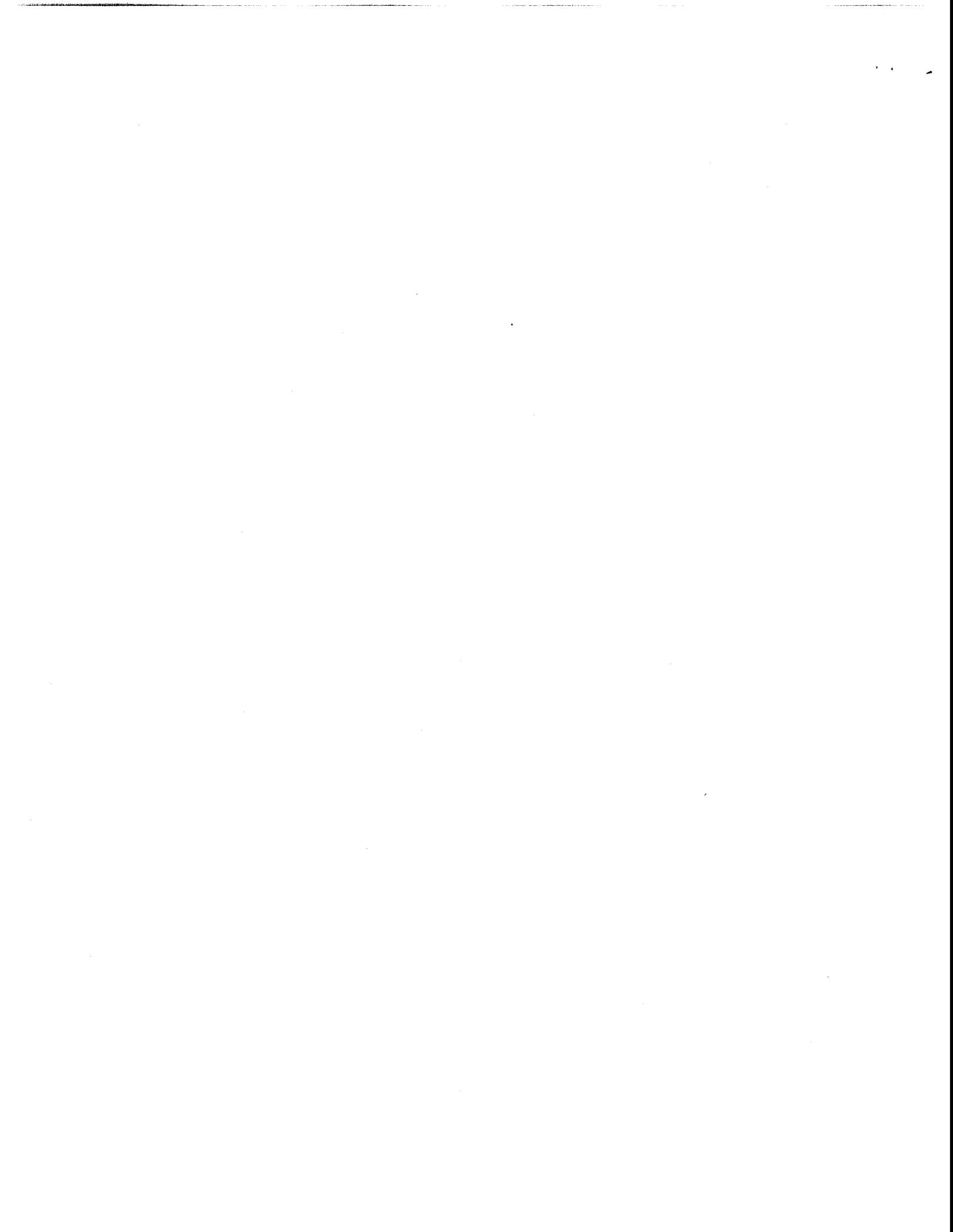
To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through 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).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: “An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.”

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States.” The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means temporary, occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.”

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.

[REDACTED] who claims to have lived in the United States since September 1981, filed her application for legal permanent resident status under the LIFE Act (Form I-485) on July 30, 2001. As evidence of her residence in the United States during the years 1981-1988 the applicant submitted the following documentation:

Three photocopied merchandise receipts from stores in New York City, dated in 1982 and 1984.

Five notarized letters or affidavits from residents of Florida, Georgia, and New York, dated in June and July 2001 – four of whom indicate that they had known the applicant in the United States since the mid-1980s and the other of whom indicated that he had known the applicant in the United States since the early 1980s.

The applicant subsequently submitted some additional documentation, including:

- A letter from the administrative assistant of [REDACTED] dated February 3, 2004, stating that the applicant and her husband, [REDACTED] were members of the church and had been attending services since 1985.
- [REDACTED] December 29, 2004, stating that he met the applicant and applicant’s boyfriend and future husband) in 1981 [REDACTED] where the latter was offered a parking attendant job. By 1984, according to [REDACTED] worked a night shift at the parking lot and was a handyman during the day at a building owned by [REDACTED] As compensation for this work [REDACTED] states that he let Hemant Singh and the applicant live in the basement free of charge. [REDACTED] indicates that he used to socialize with Hemant Singh and the applicant on Saturday nights.



- [REDACTED], a resident of Sunrise, Florida, dated December 29, 2004, stating that she met the applicant and [REDACTED] in 1982 at a department store in New York City. According to [REDACTED] they exchanged telephone numbers and were in occasional contact by phone until the applicant and Hemant Singh moved from New York to Miami around 1984, at which time [REDACTED] helped the applicant get work as a housekeeper with her in-laws. [REDACTED] indicates that the applicant and [REDACTED] were married in May 1989, and that she and her family attended and paid for everything in gratitude for the applicant's household service.

On August 6, 2007, the director issued a Notice of Intent to Deny (NOID), indicating that the documentation of record was insufficient to establish the applicant's continuous unlawful residence in the United States during the time period of 1981 to 1988. The applicant was given 30 days to submit additional evidence.

Counsel responded with a brief asserting that the evidence already in the record was not being properly considered and indicating that the applicant did not have any further documentation of her U.S. residence during the 1980s. According to counsel, the applicant initially entered the United States with a visitor's visa in 1981, and became illegal when she overstayed her visa, but the applicant cannot show her initial entry in 1981, however, because her passport was stolen in a robbery. As "proof" thereof counsel submitted a photocopied police report that included an affidavit by the applicant concerning the robbery and lost passport.

On September 10, 2007, the director issued a decision denying the application. The director determined that the record failed to establish the applicant's continuous unlawful residence in the United States for the requisite period to qualify for permanent resident status.

Counsel filed a timely appeal (Form I-290B), reiterating his contention that the documentation in the record was not being properly considered and that the totality of the evidence establishes the applicant's continuous residence in the United States during the requisite period to qualify for permanent resident status. Counsel stated that an appeal brief and additional evidence would be filed after the applicant received the record of proceedings. Though the record of proceedings has been made available to the applicant and counsel, no further materials have been received in support of the appeal.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. Department of Justice*, 381 F.3d 143, 145 (3d Cir. 2004).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that she has not.



With respect to the applicant's robbery, in which it is asserted that her passport was stolen, there are conflicting dates about when it occurred. The police report is dated August 31, 1993. The applicant's affidavit, however, is dated four months earlier, on April 26, 1993. Moreover, in her affidavit the applicant stated that the robbery occurred on August 24, 1992 – a full year before the police report. In addition to these discrepancies, the applicant stated in her affidavit that the passport lost in the robbery was issued to her in Trinidad in 1985 or 1986. That passport, therefore, would have had no record of her alleged entry into the United States in 1981.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). The applicant has not explained any of the myriad inconsistencies discussed above. Moreover, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.*

The photocopied merchandise receipts bearing dates in 1982 and 1984 have little or no evidentiary weight. They all contain longhand entries with no date stamps or other official marks to verify that they were actually prepared in 1982 and 1984. Moreover, two of the three do not even identify the customer. One receipt does identify the applicant as the customer, but provides no address for her. Thus, the receipts are not persuasive evidence that the applicant resided in the United States in 1982 or 1984.

As for the five notarized letters/affidavits in 2001, from individuals who claim to have known the applicant in the United States since the 1980s, four of the authors only claim to have known the applicant since 1985 or 1986, and therefore cannot attest to her residence in the United States during earlier years. All of these documents, including the one from the individual who claims to have known the applicant in the United States since the time of her alleged entry in 1981, are very brief. They provide almost no information about the applicant's life in the United States during the 1980s, or the nature and extent of the authors' interaction with the applicant during that time. Nor are they accompanied by any documentary evidence – such as photographs, letters, and the like – of the applicant's personal relationship with any of the authors in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the referenced documents have little or no probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States during the years 1981-1988.

With regard to the letter from the administrative assistant of [REDACTED] the regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides that attestations by churches, unions, and other organizations as to the applicant's residence must (A) identify the applicant by name; (B) be signed by an official whose title is shown; (C) show inclusive dates of membership; (D) state the address where the applicant resided during the membership period; (E) include the seal of the church impressed on the letter or the letterhead of the church if it has letterhead stationery; (F) establish how the church official knows the applicant; and (G) establish the origin of the information about the applicant.



The letter from [REDACTED] in 2004 does not meet all the above criteria. In particular, it does not state where the applicant lived during the 1980s; does not establish how the administrative assistant knows the applicant, such as the date and circumstances of their meeting and the extent of their interaction over the years; and does not establish the origin of her information about the applicant's membership since 1985, such as whether it comes from church records or is based on the hearsay of others. Moreover, the letter's author does not even claim to know where the applicant was before 1985. Accordingly, the letter from Trinity Church has little probative value as evidence of the applicant's continuous unlawful residence in the United States during the years 1981-1988.

[REDACTED] in 2004 have more content than the letters and affidavits from 2001, but they are still short on specifics. Neither affiant stated where the applicant lived during the 1980s. In fact, both affidavits focused more on the applicant's boyfriend, Hemant Singh, whom the applicant later married in 1989. Neither affiant provided detailed information about the applicant spanning the time frame of 1981 to 1988. Furthermore, neither affidavit is accompanied by any documentary evidence – such as photographs, letters, and the like – of the applicant's personal relationship with either of the affiants in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavits have limited probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States during the years 1981-1988.

There are other photocopied documents in the record with dates from the 1980s with no evident connection to the applicant. They do not identify or have any discernible relationship to the applicant on the face of the documents. There are also some photographs of unstated and unverifiable date and location. None of these additional documents merits further consideration.

For the reasons discussed above, the AAO determines that the applicant has failed to establish that she resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act. Therefore, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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

