U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: DEC 12 2013 Office: BOSTON FILE: [redacted]

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

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.

Thank you.

for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Boston Field Office Director (director) denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding the applicant had failed to establish that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, the applicant asserts that he has met his burden of proof to establish his continuous, unlawful residence in the United States during the statutory period.

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 through May 4, 1988. *See* § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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 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 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 (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.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

On May 24, 1990, the applicant applied for class membership in a legalization class-action lawsuit and submitted a Form I-687, Application for Status as a Temporary Resident. Subsequently, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

In support of his claim of continuous residence in the United States, the applicant submitted a number of unsworn witness statements. wrote that he met the applicant in 1982 and visited him on several occasions between 1982 and 1984. wrote that he lived in New York between 1982 and 1987 and that he visited the applicant in Brooklyn on several occasions. These statements are general in nature. Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness statements do not provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations, and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period. To be considered probative and credible, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. The witnesses do not specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. They do not state how frequently they had contact with the applicant during the requisite period. They merely indicate that that they saw him on "several occasions."

The applicant submitted unsworn statements from which are undated and therefore will be given no weight.

The applicant submitted a single affidavit, dated 1990, from who states he has known the applicant to live in the United States since 1980. In a notice of intent to deny the application (NOID), the director advised the applicant of the discrepancy between Mr. statement and that of the applicant as to when he began residing in the United States. The applicant did not address this inconsistency.

The applicant submitted an unsworn statement from who states he has known the applicant for the past 25 years. He wrote that he met the applicant for the very first time when he delivered milk to the applicant's workplace at in 1986 and 1987. The applicant indicated on his Form I-687 that he worked in Hyannis in those years but moved to Chicago in 1987. It is unclear whether Mr. maintained contact with the applicant after the applicant moved to Chicago.

None of the witnesses state how they date their initial meeting with the applicant in the United States. The witnesses do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these

reasons the AAO finds that the witness statements do not indicate that their assertions are probably true.

The applicant also submitted a bank receipt, and lease, dated during the requisite period. They were given some weight. He provided the director with a 1981 metered postmarked envelope. He also submitted an English class receipt, dated December 12, 1983, which indicated the applicant was residing in Chicago on that date. However, in the Form I-687 application for temporary residence, the applicant indicated he resided in Brooklyn from 1981 to 1984. The applicant also submitted an unsworn, undated statement from stating that he rented his home on Massachusetts to the applicant between 1985 and 1987. However, on his Form I-687 application, the applicant stated he began residing at that address in June 1984.

In a Notice of Intent to Deny (NOID), the director advised the applicant that he had not established his entry into the United States before January 1, 1982 or his continuous residence throughout the statutory period. He further advised the applicant that his testimony regarding when he first entered the United States was inconsistent with the testimony of witness who knew that the applicant had residence in the United States beginning in 1980. The director provided the applicant with thirty days during which he might submit additional evidence of having resided in the United States during the statutory period.

In response to the NOID, the applicant resubmitted evidence he previously submitted and failed to address the inconsistency raised by the director.

In response to the NOID and on appeal, the applicant had the opportunity to provide contemporaneous evidence of having resided in the United States during the statutory period as well as to provide additional affidavits and employment letters that attest to his residence in the United States during the statutory period.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. at 582.

In sum, the applicant did not provide sufficient probative, contemporaneous evidence of having resided in the United States during the statutory period. Thus, it is found that the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988. Accordingly, the applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

According to evidence in the record, the Police Department arrested the applicant on November 16, 1990 and charged him with violating: chapter 265 section 13H of the Massachusetts General Laws (MGL), *indecent assault and battery on person 14 or older* and chapter 272 section 16 MGL, *open and gross lewdness and lasciviousness.* On May 28, 1992, the applicant was convicted

on the first charge, a felony. In 2005, after the court records had been destroyed, the court vacated the conviction, finding the applicant had not been advised of the immigration consequences of his plea.[1] The conviction will not be considered.

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

[1] In an affidavit to support his motion to vacate his conviction, the applicant stated that he wanted to obtain a record of his criminal proceedings, but the records were destroyed. He further stated that according to his recollection, he was not advised of the potential immigration consequences of his guilty plea.