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**U.S. Citizenship  
and Immigration  
Services**

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FILE: [REDACTED]  
MSC 02 243 68926

Office: DALLAS

Date: DEC 10 2007

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.

Robert P. Wiemann, 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, Dallas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

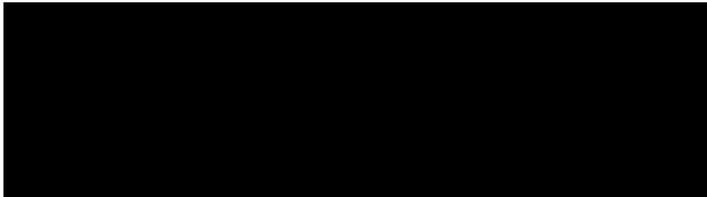
The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, counsel for the applicant claims that the service erred by ignoring evidence pertaining to the relevant period, and claims that the applicant had in fact met his burden of proof.

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).

Although Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant claimed on his affidavit for class membership that he entered the United States without inspection, but does not provide the exact date or year of entry. On his Form I-687, which he signed under penalty of perjury on October 1, 1993, he claimed to reside at the following addresses, but failed to specify the time periods during which he lived there:



With regard to his employment history, the applicant claimed that he worked for [REDACTED] as a painter from April 1981 to March 1986, and for [REDACTED] in Wyley, Texas, from June 1986 to the summer of 1993.

In an attempt to establish continuous unlawful residence since May 1981 and continuous physical presence in the United States from November 6, 1986 through May 4, 1988, as claimed, the applicant furnished the following evidence:

- (1) Affidavit dated April 29, 2002 by [REDACTED], sister-in-law of the applicant, claiming that she has known the applicant since February 1981. She claims that he resided at [REDACTED], and that he resided there from February 1981 to March 1986. The AAO notes that the applicant did not list this address as a prior address on Form I-687. She further claims that he married her sister in 1986, and moved to her home at [REDACTED] Garland, TX 75040.
- (2) Notarized statement dated May 11, 2002 from [REDACTED], claiming that he has known the applicant "as a relative of mine through my father, [REDACTED], since I can

remember.” He claims that the applicant helped his father while selling at the Swap Meet in 1973.

- (3) Notarized statement dated May 11, 2002 from [REDACTED] claiming that he brought the applicant “over,” (presumably into the United States) during vacations from school. He claims that the applicant began working for him in February 1981 and continued to do so until March 1986. He claims that during this time, he resided at [REDACTED] NM. He further claims that the applicant is his cousin, and that the applicant also worked with him at the Flee Market (Swap Meet) selling ice cream and other snacks.
- (4) Notarized statement dated May 11, 2002 from [REDACTED], claiming that he met the applicant on June 7, 1981 at his father’s birthday party. He said his father had a business at in the Swap Meet in El Paso, and that they worked side by side each week.
- (5) Affidavit dated September 21, 1992 by [REDACTED] claiming that he has known the applicant in El Paso, Texas, from June 1976 to the present. No additional information is provided.
- (6) Affidavit dated September 21, 1992 by [REDACTED] claiming that he has known the applicant in El Paso, Texas, since 1973. He further claims to have first met the applicant in 1978.
- (7) Affidavit dated September 24, 1992 by [REDACTED] claiming that she has known the applicant to reside at [REDACTED] from 1975 to the present. She states she met him when they worked at Big Boy.
- (8) Affidavit dated May 1, 2002 by [REDACTED] claiming that she has known the applicant since 1986 at [REDACTED], Garland, Texas.
- (9) Affidavit dated April 27, 2002 by [REDACTED], claiming that she has known the applicant since 1986 when she met him at her mother’s home.
- (10) Affidavit dated April 28, 2002 by [REDACTED] claiming that he has known the applicant since 1986 when he met him at his mother’s home.
- (11) Affidavit dated April 27, 2002 by [REDACTED] claiming that she has known the applicant since 1986 when she met him at her mother’s home.
- (12) Affidavit dated April 24, 2002 by [REDACTED] claiming that he has known the applicant since 1986 when he began working at [REDACTED]. He claims that they taught each other some English and Spanish, respectively, and that they’ve occasionally fished together.
- (13) Affidavit dated May 1, 2002 by [REDACTED] claiming that he has known the applicant since 1986 when he met him through his sister-in-law, [REDACTED].
- (14) Affidavit dated May 2, 2002 by [REDACTED] claiming that he has known the applicant since 1986 when he began working at [REDACTED]. He claims that they would each lunch

together and he would give the applicant rides to and from work as needed. He further claims that the applicant resided at [REDACTED] in Garland, Texas, during that time.

- (15) Affidavit dated May 1, 2002 by [REDACTED] claiming that he has known the applicant since 1986 at [REDACTED] in Garland, Texas, and claims they were neighbors.
- (16) Affidavit dated April 27, 2002 by [REDACTED] claiming that he has known the applicant since 1986. He further claims that the applicant resided at [REDACTED] in Garland, Texas, during that time.
- (17) Affidavit dated April 30, 2002 by [REDACTED] claiming that she has known the applicant since 1986 when she met him at his mother's house.
- (18) Affidavit dated April 30, 2002 by [REDACTED] claiming that she has known the applicant since 1986 when she met him through her friend [REDACTED].
- (19) Affidavit dated May 1, 2002 by [REDACTED], claiming that she has known the applicant since 1987. She further claims that she taught his son, [REDACTED]. It is noted for the record, however, that [REDACTED] pursuant to a birth certificate submitted for the record, was not born until November 14, 1988.
- (20) Paystubs from [REDACTED] from various weeks from September to December 1987.
- (21) Birth Certificate for the applicant's son, [REDACTED], in Dallas, Texas, dated September 5, 1986.
- (22) Notarized statement dated October 1, 1993 from [REDACTED] stating that he is willing to hire the applicant for \$5.00 per hour.
- (23) Letter dated September 27, 1993 from [REDACTED], claiming that the applicant worked for him from April of 1981 to March of 1986. The type and manner of work is not specified.
- (24) Affidavit dated September 19, 1992 from [REDACTED] claiming he has personal knowledge of the applicant residing in the United States at [REDACTED] from April 1981 to March 1986.
- (25) Affidavit dated October 1, 1992 by [REDACTED], sister-in-law of the applicant, claiming that the applicant lived in her home from 1986 to fall 1987 at [REDACTED] Garland, Texas.

On February 24, 2005, CIS issued a Notice of Intent to Deny (NOID) the application. The district director noted that despite the applicant's claim that he continually resided in the United States since May 1981, the record did not contain credible evidence to support a finding that the applicant was continually present from before 1982 through 1988. The director specifically noted that while the applicant submitted an abundance of documentation pertaining to the period from 1986 to 1988, he failed to sufficiently document the period from before January 1, 1982 through 1985. The applicant was afforded an opportunity to rebut these findings and submit any additional evidence in support of the application.

within 30 days. The application was subsequently denied on August 6, 2005, wherein the director noted that the applicant had failed to respond to the NOID.

On appeal, counsel for the applicant contends that contrary to the director's conclusions, the applicant did in fact file a timely response to the NOID. A copy of the response, submitted with the appeal, challenges the director's conclusions that the affidavits provided were sufficient to establish his eligibility. In lieu of new information, however, the applicant submitted the documents previously deemed insufficient by the director.

Upon review, the AAO concurs with the director's findings.

As stated in 8 C.F.R. § 245.15(b)(1), a list of evidence that may establish an alien's continuous residence in the United States can be found at § 245a.2(d)(3).

It does appear, as noted by the director, that the applicant has sufficiently documented his continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Therefore, the issue before the AAO is whether the applicant has established that he was continuously residing in the United States in an unlawful status since before 1982 through May 4, 1988.

The *Matter of E-- M--*, 20 I&N Dec. 77 (Comm. 1989) provides guidance in assessing evidence of residence, particularly affidavits. In that case, the applicant had established eligibility by submitting (1) the original copy of his Arrival Departure Record (Form I 94), dated August 27, 1981; (2) his passport; (3) affidavits from third party individuals; and (4) an affidavit explaining why additional original documentation is unavailable. Furthermore, the officer who interviewed that applicant recommended approval of the application, albeit, with reservations and suspicion of fraud. In this case, the interviewing officer recommended denial of the application, and there is no Form I-94 or admission stamp in a passport establishing the applicant entered the United States prior to January 1, 1982.

The applicant in this case claims he entered the United States without inspection. However, no definitive statement regarding the date or the year of entry has been submitted. Since he entered without inspection, there is no documentary evidence in the form of an arrival-departure record or stamped passport to verify the exact date of entry. The applicant provided affidavits in support of the contention that he was present in the United States prior to 1981, but these documents are insufficient to establish his eligibility. Specifically, numerous affidavits claim that the applicant was in the United States at various points in the 1970's, but none of these documents can sufficiently demonstrate that the applicant was continuously residing in the United States unlawfully. For example, the affidavit of [REDACTED] indicates that he would "bring the applicant over" to the United States on vacations from school. Since the applicant was of school age in the 1970's, it is therefore likely that the affidavits of [REDACTED]s, and [REDACTED], who claim to have known the applicant since 1976 and 1973, respectively, attest to meeting the applicant when he was visiting on school holidays.

With regard to continuous unlawful residence during this period, the evidence still remains unclear. Several affiants, including [REDACTED] and [REDACTED], claim to have known the applicant at [REDACTED] in 1981. This contradicts the claim of [REDACTED], who claims that she has known the applicant to reside at [REDACTED] from 1975 to the present. In addition, this further contradicts the above-referenced affidavits of [REDACTED] and [REDACTED] who claim that the applicant resided in New Mexico in the 1970's. It is incumbent upon the petitioner to resolve any

inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). It should also be noted that on Form I-687, the applicant never listed the address of [REDACTED]. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. *See* 8 C.F.R. § 245a.2(d)(3)(v).

Most of the affidavits submitted provide the means at which the affiants can be contacted. However, the majority of these affidavits also omit the basis of the affiants' knowledge of the applicant or the nature of their acquaintance with him during the relevant period. Most of the documents are boilerplate affidavits that are virtually identical to one another, and most of the affidavits contain, at best, one sentence stating that the applicant is an honest person.

These affidavits are insufficient to demonstrate that the applicant unlawfully resided in the United States before January 1, 1982 and continually resided there unlawfully through May 4, 1988. The applicant has not submitted any credible contemporaneous documentation to establish presence in the United States from the time he claimed to have commenced residing in the U.S. through May 4, 1988, such as paystubs, rent receipts, leases, utility bills, or contract in which the applicant was a party. In light of the fact that the applicant claims to have continuously resided in the United States, this inability to produce contemporaneous documentation of residence raises serious questions regarding the credibility of the claim.

Given the absence of contemporaneous documentation and the reliance on affidavits and letters which do not meet basic standards of probative value, it is concluded that the applicant has failed to establish, by a preponderance of evidence, that he continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

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