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U.S. Citizenship  
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[REDACTED]

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FILE: [REDACTED] Office: EL PASO Date: **NOV 29 2007**  
MSC 02 240 66090

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, El Paso, 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 established that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. Specifically, the director determined that based on the fact that the applicant was in possession of a properly issued border crossing card from 1980 to 1997, and that the card was used to re-enter the United States in 1987 after she visited her parents in Mexico, the applicant had ceased being in the United States in an unlawful status and was therefore ineligible for the benefit sought.

On appeal, counsel submits an addendum to Form I-290B on which he contends that the director erred by not giving the affidavits provided by the applicant the necessary evidentiary consideration. No additional evidence is submitted.

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).

On her affidavit for class membership, which she signed under penalty of perjury on June 9, 1994, the applicant claimed that she first entered the United States in November 1981 without inspection. On Form I-687, Application for Status as a Temporary Resident, which she also signed under penalty of perjury on the same date, she claimed to live at the following addresses in El Paso, Texas during the requisite period:

November 1981 to March 1986:  
March 1986 to November 1988:

She further indicates on Form I-687 that she was employed as a maid for [REDACTED] from November 1981 to the present, and that she made one trip to Mexico from May 9, 1987 to May 15, 1987.

In an attempt to establish continuous unlawful residence in the United States since before January 1982 through 1988, the applicant furnished the following evidence:

- (1) Affidavit dated March 8, 2003 by [REDACTED] brother of the applicant, who claims that she lived with him since November 1981. He claimed that in November 1981, he resided at [REDACTED], and further claimed that while the applicant resided with him, she was working for [REDACTED]
- (2) Affidavit dated March 8, 2003 by [REDACTED] claiming that the applicant worked for her as a housekeeper, five days a week, from 1981 to 1985 for a salary of \$600 per week. She further claims that from December 1985 to December 2002, the

applicant continued to work for her as a housekeeper for one day a week for a salary of \$45 per day.

- (3) Affidavit dated March 5, 2003 by [REDACTED], claiming that the applicant worked for her as a housekeeper, two days per week, from December 1985 to December 2002. This contradicts the applicant's claim on Form I-687 where she indicates that she worked for only one employer, [REDACTED] during the requisite period.
- (4) Affidavit dated March 5, 2003 by [REDACTED], claiming that the applicant worked for her as a housekeeper, one day a week, from December 1985 to December 2002. As stated above, this contradicts the applicant's claim on Form I-687 where she indicates that she worked for only one employer, [REDACTED] during the requisite period.
- (5) Affidavit dated March 5, 2003 by [REDACTED], claiming that the applicant worked for her as a housekeeper, one day a week, from December 1985 to December 2002. Again, this contradicts the applicant's claim on Form I-687 where she indicates that she worked for only one employer, [REDACTED] during the requisite period.

On September 16, 2003, the director issued a Notice of Intent to Deny (NOID) the application. The district director noted that the record did not contain credible and verifiable evidence that the applicant continually maintained an unlawful status in the United States since before January 1, 1982 through 1988, as well as maintained continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Specifically, the director noted that the applicant was in possession of a properly issued border crossing card from 1980 to 1997, and that the card was used to re-enter the United States in 1987 after she visited her parents in Mexico. Noting that if this was the case, the applicant had ceased being in the United States in an unlawful status upon her re-entry in 1987. The applicant was afforded an opportunity to rebut the director's findings and submit additional evidence in support of her eligibility.

In a response dated October 14, 2003, counsel indicated that the applicant had provided sufficient evidence, in the form of affidavits, to establish her continuous residence in the United States. He further claimed that despite re-entering the United States with her border crossing card, she had intended to resume her unlawful status upon entry and therefore such status was not interrupted. In support of the applicant's eligibility, the following documents were submitted:

- (1) Letter dated September 23, 2003 from [REDACTED], Presiding Overseer of Southwest-Spanish Congregation of Jehovah's Witnesses, certifying that the applicant has been an active and baptized member of the congregation since December 1985 and was currently attending the Southwest Spanish Congregation in El Paso. The letter omits the address(es) at which the applicant resided during her membership. Additionally, the writer fails to establish how he knows the applicant or the origin of the information provided.
- (2) Affidavit dated August 10, 1993 from [REDACTED] claiming that the applicant was employed by her as a housekeeper since 1981. She claimed that her salary as of the date of the affidavit in 1993 was \$60 per week. However, this contradicts the statements provided in her future affidavit executed on March 8, 2003, in which she claims that starting in December 1985, the applicant reduced her schedule to one day per week during which time she earned \$45 per day.

The applicant also submitted various documents and receipts pertain to the period from 1999 to present. In addition, some documentation from 1988, such as a life insurance certificate and utility bill for the applicant's sister, [REDACTED] is also submitted. None of the documentation pertaining to her sister mentions or identifies the applicant.

The director denied the application on March 12, 2004, noting that there was insufficient evidence to show that the applicant entered and maintained continuous unlawful status in the United States from before January 1, 1982, the beginning of the qualifying period, through 1988, or that she had maintained continuous physical presence in the United States from November 6, 1986 through May 4, 1988.

On appeal, counsel again asserts that the applicant satisfied her burden of proof, and requests reconsideration of the affidavits provided. No new evidence is submitted in support of the appeal.

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 quality 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 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.

The *Matter of E-- M--* decision 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.

Although the applicant claims she entered the United States in 1981, she likewise claims that she entered without inspection. As a result, there is no documentary evidence in the form of an arrival-departure record or stamped passport to verify the exact date of entry. In support of her entry and her continuous unlawful presence in the United States from 1982 to 1988, the applicant relies on affidavits, including one from her sister, with whom she claims to have resided. This affidavit alone is insufficient to corroborate the applicant's claim. Although the applicant's affidavit for class membership claims that she entered the United States illegally in November 1981, no additional evidence is submitted in support of that claim. Specifically, she indicated in her interview that she crossed the border with her sister. However, no affidavit from her sister attesting to this is submitted.

The AAO notes that on Form I-687, the applicant claims that she began working for [REDACTED] in 1981 and continued to work for her at the time of filing. An affidavit from [REDACTED] dated March 8, 2003, corroborates the claim that she began working for her in 1981, but does not state the address at which [REDACTED] knew the applicant during this time. Furthermore, in response to the NOID, counsel submits another affidavit from [REDACTED] executed on August 10, 1993, which provides contradictory information regarding the applicant's salary during this period. Specifically, the 1993 affidavit claims that in 1993, the applicant was earning \$60 per week. The 2003 affidavit, however, claims that the applicant began working for her only one day a week in 1985, and earned \$45 per day. 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).

The applicant submits three additional affidavits from alleged employers, who claim that the applicant began working for them in 1985. These affidavits, however, are identical in wording to each other, and fail to provide any details regarding the extent of their acquaintance with the applicant, such as the address at which she resided during her employment. 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. at 591.

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).

While these standards are not to be rigidly applied, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in such basic and necessary information. As discussed above, the affidavits from the applicant sister and her various employers provide minimal information and do not satisfy the above criteria.

While the applicant submitted an attestation from [REDACTED] Presiding Overseer of Southwest-Spanish Congregation of Jehovah's Witnesses, this document also fails to satisfy the regulatory requirements. The letter omits the residence of the applicant during the period of her alleged membership, and further omits the origin of the information provided and the manner in which [REDACTED] is acquainted with the applicant, as required by 8 C.F.R. §§ 245a.2(d)(3)(v)(D), (F) & (G).

The applicant has likewise failed to establish her continuous physical presence in the United States from November 6, 1986 to May 4, 1988. Although the applicant provides some documentation in her sister's name from 1988, there is no mention of or reference to the applicant in these documents. The period from November 6, 1986 to May 4, 1988 is not fully documented; therefore, it cannot be concluded that the applicant was continually present in the United States during this entire period. Although it appears that the applicant took a brief trip to Mexico in 1987, this event alone will not defeat the applicant's eligibility, since, brief, casual and innocent absences from the United States do not break the physical presence requirement. Since no additional information is provided, however, with regard to the duration of this trip, the AAO cannot properly analyze this issue. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the application. 8 C.F.R. § 103.2(b)(14).

The AAO has reviewed all documentation submitted and finds that the evidence contained in the record is simply insufficient to meet the burden of proof in these proceedings. Given the absence of contemporaneous documentation and the reliance on affidavits 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 she continuously resided in the United States in an unlawful status from January 1, 1982 through 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.