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U.S. Citizenship  
and Immigration  
Services

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*[Handwritten initials]* L2

[Redacted]

FILE: [Redacted]  
MSC 01 363 61833

Office: CHICAGO Date:

FEB 06 2008

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.

*[Signature]*  
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 Interim District Director, Chicago, 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 she had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988 or maintained continuous physical presence in the in the United States during the period from November 6, 1986 through May 4, 1988.

On appeal, counsel states that the applicant submitted substantial documentary evidence, and argues that the director failed to thoroughly cite the reasons for the denial. Counsel further contends that the applicant's response to the notice of intent to deny was not acknowledged or mentioned in the director's decision.

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 the affidavit for class membership, which she signed under penalty of perjury on December 12, 1990, the applicant claimed that she first entered the United States on a B-1 visa on July 15, 1981, and violated her status by overstaying. On Form I-687, Application for Status as a Temporary Resident, which she also signed under penalty of perjury on December 12, 1990, the applicant claimed to reside at the following addresses during the relevant period:

September 1981 to August 1987:  
September 1987 to July 1990:



The applicant lists her employers during this period as follows:

October 1981 to August 1987:  
September 1987 to July 1990:



In an attempt to establish continuous unlawful residence since before January 1, 1982 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 January 29 (year unknown) by  claiming that he has known the applicant for over 20 years. He claims that he has known her to live only in the United States and claims that he has "full knowledge" of her residing in the United States before January 1, 1982 as he has known her in this country well before then.

- (2) Letter dated February 18, 2002, from [REDACTED] President of [REDACTED], claiming that the applicant has been a devotee of [REDACTED] since 1985. He claims that she visits temple every Sunday and on other religious festivals regularly, and refers to a website for verification of the dates of said festivals.

On May 2, 2003, CIS issued a Notice of Intent to Deny the application. The district director noted that despite the applicant's claim that she continually resided in the United States since 1981, the record did not contain credible evidence to support a finding that the applicant was continually present from before January 1, 1982 through May 4, 1988. The applicant was afforded 30 days to respond with additional evidence to support her eligibility.

In response, counsel for the applicant resubmitted copies of the two documents discussed above as well as a new affidavit dated January 25, 2002 by [REDACTED] who claims to have known the applicant for over 20 years as well as her husband and son. The affiant further claims that he knows the applicant has been residing in the United States since 1981.

The director denied the application on March 9, 2005, noting that there was insufficient evidence to show that the applicant was unlawfully present in the United States from before January 1, 1982, the beginning of the qualifying period, through May 4, 1988 or that she was continuously physically present in the United States from November 6, 1986 through May 4, 1998. Specifically, the director focused on the deficiency of the affidavits, and based the decision in part on the lack of primary and/or secondary evidence.<sup>1</sup>

On appeal, counsel asserts that the documentary evidence submitted are sufficient to demonstrate the applicant's eligibility, and relies upon a February 13, 1989 memorandum from the Office of the Director of the Eastern Regional Processing Facility to all supervisors and adjudicators, which supports approval of an application where the only evidence submitted is affidavits that are verifiable and credible.

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 or 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

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<sup>1</sup> Although the director incorrectly applied the regulation at 8 C.F.R. § 103.2(b) to the instant application, it is harmless error because the AAO evaluates the sufficiency of the evidence in the record according to its probative value and credibility as required at 8 C.F.R. § 245a.12(f).

additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application.

Although counsel argues that the documentary evidence submitted in support of the application is sufficient to warrant approval, the AAO finds that the submitted evidence is not relevant, probative, and credible.

It appears from the record that the applicant was present in the United States before January 1, 1982 since she entered legally on a B-1 visa but entered unlawful status when she overstayed. The key issue, therefore, is whether sufficient evidence exists to find that the applicant continuously resided unlawfully in the United States from January 1, 1982 through May 4, 1988 and maintained continuous physical presence in the United States from November 6, 1986 to May 4, 1988.

The record contains two affidavits in support of the applicant's presence in the United States during the relevant period. 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.

**The affidavits submitted in support of this application fall far short of meeting the above criteria.** The affidavits of [REDACTED] and [REDACTED] merely claim that they have known the applicant in the United States for 20 years or more. They do not state the addresses at which they knew her to reside, nor do they provide the basis for their acquaintance with the applicant. Finally, they omit the origin of the information being attested to. There is no definitive evidence, therefore, to prove the applicant's continuous unlawful residence and presence in the United States during the relevant period.

The applicant also submits a letter from the president of her temple, who claims that she has been a member since 1985. According to 8 C.F.R. §254a.2(d)(3)(v), attestations of churches or other organizations provided to establish an applicant's residence in the United States should include the applicant's inclusive dates of membership, the address(es) where the applicant resided during membership, how the author knows the applicant, and the origin of the information being attested to. The letter from [REDACTED] omits all of these critical elements.

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation. The minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.12(e).

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 since before January 1, 1982 through May 4, 1988 or that she maintained continuous physical presence in the United States during the period from November 6, 1986 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.