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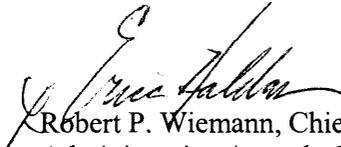
IN RE: Applicant:

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. 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, Baltimore, 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 (1) continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988; or (2) maintained continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988.

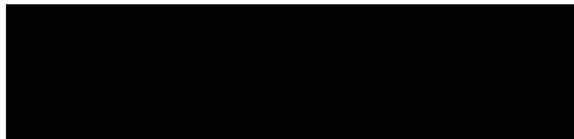
On appeal, counsel states that the applicant has submitted substantial documentary evidence including letters from former employers and affidavits from friends and clergy. He asserts that the applicant has met her burden of proof and has established her eligibility for permanent resident status under the LIFE Act by clear and convincing evidence.

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 May 25, 1990, the applicant claimed that she first entered the United States on September 12, 1979 when she crossed the border without inspection. On Form I-687, Application for Status as Temporary Resident, she claimed to reside at the following addresses during the relevant period:

September 1979 to July 1983:
August 1983 to May 1987:
June 1987 to Present:



Regarding her employment history, the applicant claimed to have worked for the following employers:

October 1979 to May 1983:	S. Mark Apparel Co., Inc.
December 1982 to October 1983:	Luba Paredes
June 1983 to May 1987:	Tarolan, Inc.
June 1987 to Present:	Leslie Barrett

The applicant also claimed on Form I-687 that she was self-employed from December 1982 to the present.

In an attempt to establish continuous unlawful residence since September 1979 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) Air Travel Voucher dated May 2, 1987, showing applicant's air travel reservation from New York to La Paz on May 8, 1987.
- (2) Affidavit dated May 3, 1990 by [REDACTED] claiming that she has known the applicant since December 1979. She claims to have known her as a neighbor and co-worker.
- (3) Affidavit dated June 5, 1990 by [REDACTED] claiming that he has knowledge of the applicant living at [REDACTED] from September 1979 to July 1983; [REDACTED] from August 1983 to May 1987, and at [REDACTED] from June 1987 to Present. He claims that he is able to determine this information because they are neighbors and they shop and the same supermarket.
- (4) Letter dated May 3, 2004 from [REDACTED] Income Tax Preparer, claiming that his clients, [REDACTED] and [REDACTED], are relatives of the applicant. He claims that his clients told him that the applicant illegally entered the United States in 1979 and that she worked illegally as a restaurant housekeeper and for [REDACTED] prior to getting married.
- (5) Notarized statement dated May 26, 2004 by [REDACTED] claiming that she has known the applicant since 1972 when they resided in Bolivia. She claims that she met her again in 1982 when she came to New Jersey, and that they have been in contact since then.
- (6) Notarized statement dated May 24, 2004 by [REDACTED]. The letter is somewhat unclear, but appears to claim that she came to the United States in 1987 and would visit her grandmother in New York frequently during that time. She indicates that she met the applicant at church, and when the applicant moved to Maryland they continued to be friends.
- (7) Copies of letters addressed to the applicant at [REDACTED] postmarked January 14, 1982 and July 12, 1983.
- (8) Copy of letter addressed to the applicant at [REDACTED] postmarked April 30, 1981.
- (9) Copy of lease agreement between the applicant and [REDACTED] and [REDACTED] for 46 Broadway, dated September 1, 1979. It is noted that clause 3 of the agreement requires tenants to comply with and execute all rules, orders and regulations of the New York Board of Fire Underwriters. The property, however, is located in New Jersey.
- (10) Letter dated May 7, 1990 by [REDACTED], Chairperson of Peurtorriuenos Asociados for Community Organization, Inc., claiming that the applicant has been a member of the association since 1980.
- (11) Letter dated January 17, 1990 from [REDACTED] of S. Mark Apparel Company, Inc., claiming that the applicant was employed for the company as a floor-girl from October 1979 to May 1983.
- (12) Letter dated May 14, 1990 by [REDACTED] Assistant Manager of Tarolan, Inc., claiming that the applicant was employed by the company as a dishwasher from June 1983 to May 1987.

- (13) Copies of money orders dated June 15, 1980, December 2, 1980, and November 22, 1984 payable to [REDACTED] from the applicant.
- (14) Copy of a money order dated May 5, 1984 payable to [REDACTED] from the applicant.
- (15) Letter from [REDACTED], Pastor of Community United Methodist Church, Jackson Heights, NY, claiming that the applicant has been a member of the church since 1985 and "for a few years afterwards."
- (16) Affidavit dated May 13, 1990 by [REDACTED], claiming that the applicant resided at [REDACTED] from August 1983 to May 1987.
- (17) Second Affidavit dated May 3, 2004 by [REDACTED] claiming that the applicant lived with him and his wife from 1983 to 1987 at [REDACTED]. He claims that all expenses, including rent and utilities, were under his name. He further claims that she departed the United States for a family emergency on an unspecified date, and that when she returned, she resided with him and his wife again at a new address, [REDACTED]. The affiant provides numerous documents, such as W-2 forms, student records, and bank deposits to demonstrate that he lived at these addresses as claimed.
- (18) Undated statement by [REDACTED], claiming that she is a tenant of [REDACTED] and that she and the applicant have been sharing the same apartment at this address since 1987.
- (19) Undated Affidavit for Proof of Identity by [REDACTED], claiming he has known the applicant since September 1979 as a co-worker. He claims that he knows the applicant was working as a floor girl from September 1979 but does not identify the company for which he was allegedly employed.
- (20) Affidavit dated June 5, 1990 by [REDACTED] claiming that he met the applicant as a co-worker while working at Tarolan, Inc. He also claims that she was a neighbor.
- (21) Notarized Employer Certification dated May 17, 1990 by [REDACTED], claiming that the applicant was employed by her from March 1987 to present as a nursemaid.
- (22) Letter dated October 17, 1991 from [REDACTED] claiming that the applicant has been employed by her and her husband since April of 1990. This directly contradicts the statement she provided in her Employer Certification dated May 17, 1990 where she claims that applicant began working for her in March 1987.
- (23) Affidavit dated June 10, 1990 by [REDACTED], claiming she has known the applicant since 1979. She claims that they previously worked together at S. Mark Apparel, and that they wash their clothes at the same laundry.
- (24) Letter dated May 21, 1990 from [REDACTED] Realtor with Alfacor Realty, claiming that the applicant was a tenant at [REDACTED] from September 1979 to July 1983. He further claims that all utilities were included in her monthly rent.

- (25) Undated declaration by [REDACTED], claiming that the applicant was employed by her from October 1979 to October 1983 as a "Care Taker." She further states that employment records are not available since this was a casual employment.
- (26) Affidavit dated May 23, 1990 by [REDACTED], claiming that she has personal knowledge that the applicant resided at [REDACTED] New York, NY 10022 from April 1986 to the present. She further claims that the applicant has been her assistant and a nurse companion to her son and her grandson. This statement contradicts the applicant's claim on Form I-687 that she resided at [REDACTED] and [REDACTED] during this period.
- (27) Three photographs: one depicting a family party in 1986; one depicting her sister's wedding in 1988; and one depicting the applicant and her sister at Liberty State Park in April 1988. None of these pictures identifies the applicant.
- (28) Receipt dated May 15, 1980, showing that the applicant purchased a sofa bed.

On February 4, 2005, 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 September 1979 with the exception of one trip to Bolivia, the record did not contain credible evidence to support a finding that the applicant was continually present from before 1982 through 1988. The district director specifically pointed out the deficiencies in the affidavits and other documents provided, and in accordance with *Matter of To*, 14 I&N Dec. 679 (BIA 1974), the applicant was afforded the opportunity to rebut the director's derogatory findings and submit any additional evidence in support of the application.

In rebuttal, counsel for the applicant submitted a letter dated March 2, 2005. Counsel asserted that the applicant had established her eligibility by a preponderance of the evidence, and resubmitted many of the previously-submitted documentation. Counsel also submitted the following four new affidavits in support of the application:

- (1) Notarized statement dated February 21, 2005 by [REDACTED] and [REDACTED] claiming that the applicant was employed by [REDACTED] and that they have known her since 1986. They claim that they worked for the maintenance department in the building where [REDACTED] apartment was located.
- (2) Notarized statement dated March 1, 2005 by the applicant claiming that she has resided with her sister and brother-in-law from 1983 to 1994 at [REDACTED] and [REDACTED]. Her statement does not acknowledge [REDACTED] claim that the applicant lived with her since 1986 at [REDACTED].
- (3) Second notarized statement dated March 1, 2005 by the applicant, claiming that she departed the United States on May 8, 1987 to visit her husband who was ill. She claimed that she returned to the United States on June 26, 1987.
- (4) Notarized statement dated March 1, 2005 by [REDACTED] affirming that the applicant resided with her at [REDACTED] from 1979 to 1983, [REDACTED] from 1983 to 1987, and [REDACTED] from 1987 to 1993. She claims that the applicant was unable to support herself during that time, and that she and her husband paid all utilities.

The director denied the application on October 7, 2005, noting that upon consideration of the newly-submitted evidence in response to the NOID, the applicant had still failed to substantiate her claim with credible evidence that she continuously resided and was physically present in the United States during the requisite periods. On appeal, counsel again claims that the applicant has met her burden of proof, and submits some additional documentary evidence in support of her eligibility.

The first issue on appeal is whether the applicant has demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988, as required by 8 C.F.R. § 245a.11(b).

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

Here, the submitted evidence is not relevant, probative, and credible.

The director focused on the fact that despite the applicant's claims that she resided with her sister and brother-in-law from 1979 through 1994, the affidavits alone, without sufficient independent documentation, were insufficient to establish the applicant's residence and presence in the United States. Counsel asserts that the submission of [REDACTED]'s W-2 forms and school records, which were addressed to him at the claimed places of residences, supported both his affidavit and that of wife regarding their residence and the residence of the applicant. Upon review, the AAO concurs with the director's conclusions.

The director noted several deficiencies regarding this claim, such as the failure of the applicant to submit all leases for the three identified properties. In addition, the fact that the record contains only four pieces of mail addressed to the applicant at two of these three addresses is not enough to corroborate the claims of Mr. and

Moreover, an important issue not addressed by the director is the claim that [REDACTED] alleged employer of the applicant, claims that the applicant resided with her at [REDACTED] from April 1986 to at least May of 1990, when her affidavit was executed. This is a glaring contradiction that seriously challenges the credibility of the statements of both the [REDACTED] and the applicant. 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 above inconsistencies would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided.

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 record contains numerous affidavits from acquaintances of the applicant, most of which claim that they have known the applicant as a neighbor or a co-worker. However, none of the affidavits expand on the manner in which their information was acquired. As stated above, signed attestations should contain information such as the address(es) where the applicant resided throughout the period which the affiant has known the applicant; the basis for the affiant's acquaintance with the applicant; and the origin of the information being attested to. However, most of these affidavits, specifically those by [REDACTED], [REDACTED], and [REDACTED] fall far short of meeting the above criteria. These affiants simply claim that the applicant was their neighbor or their co-worker, but omit specific details regarding the addresses where they resided, the nature of their relationship, and the basis of their claims. Merely claiming that the applicant has been known to them since 1979 as their neighbor, without providing further details and information regarding the basis for the information provided and the nature of their relationship since the date of first acquaintance cannot render credibility to these documents.

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).

The applicant has also submitted numerous employment letters and letters from clergy and other organizations in which the applicant was allegedly a participant. These documents also fall short of basic evidentiary requirements. For example, the employment letters from [REDACTED] and Tarolan, Inc. merely claim that the applicant was employed by them during a certain period, and each identifies her position title. However, the executor of each letter omits information required by 8 C.F.R. § 245a.2(d)(1)(i), such as the applicant's address at the time she was employed, whether or not the information in the letter was obtained

from official company records, or the location of company records and whether CIS could have access to those records. Furthermore, the letter from R [REDACTED] Pastor of Community United Methodist Church, which claims that the applicant has been a member of the church since 1985 and "for a few years afterwards," does not provide the applicant's address at the time of membership and fails to state how the author knows the applicant and the origin of the information being attested to, as required by 8 C.F.R. § 245a.2(d)(1)(iv).

Finally, and most importantly, are the contradictions contained in the statements of [REDACTED]. On the applicant's Form I-687, which she signed under penalty of perjury on May 25, 1990, she claimed that she worked for [REDACTED] from June 1987 to the present. The notarized employer certification dated May 17, 1990 by [REDACTED] claims that the applicant was employed by her from March 1987 to present as a nursemaid, which discounts a three month period between her records and the applicant's claimed start date of June 1987. More importantly, however, is [REDACTED]'s letter dated October 17, 1991, where she claims that the applicant has been employed by her and her husband since April of 1990, not March 1987. No explanation regarding this glaring inconsistency has been provided. As previously stated, 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. at 591-92. 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. *Id.*

It is noted that on appeal, counsel submits documentation demonstrating that the applicant's sister was appointed as legal guardian for the applicant's daughter in Bolivia on September 11, 1979 and that she continued to serve as her tutor during the early 1980's. While this document supports the premise that the applicant indeed was absent from Bolivia during this time period, it does not demonstrate that the applicant was unlawfully residing and continuously present in the United States during the requisite period.

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. Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

The second issue on appeal is whether the applicant has maintained continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988.

The applicant claims that she departed the United States on one occasion in 1987 to visit her sick husband in Bolivia. The director noted that although she submitted her air travel voucher demonstrating her departure from the United States on May 8, 1987, there was no documentation to corroborate her claim that she returned on June 26, 1987, as claimed. Counsel contends that her employer's statements, which outline her dates of employment in 1987 and thereafter, support a finding that she returned to the United

States as claimed. However, for the reasons set forth above, the documentary evidence relating to her 1987 employment is less than credible.

Upon review, the AAO concurs that there is no official record of the applicant's return to the United States in June 1987, and therefore, the exact length of her absence cannot be determined. However, it is noted that in her affidavit for class membership, signed under penalty of perjury on May 25, 1990, the applicant claimed to return to the United States on June 26, 1987. If in fact this claim is true, the applicant is ineligible for the benefit sought since her absence from the United States in 1987 exceeded the 45 day maximum allowed. According to 8 C.F.R. § 245a.15(c)(1), no single absence from the United States can exceed forty-five days without interrupting continuous residency. Therefore, if the applicant's claims are in fact true, she would have been absent from the United States from May 8, 1987 to June 26, 1987, or 49 days. The applicant has not provided evidence that due to emergent reasons, her return to the United States could not have been accomplished in the time allowed.

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