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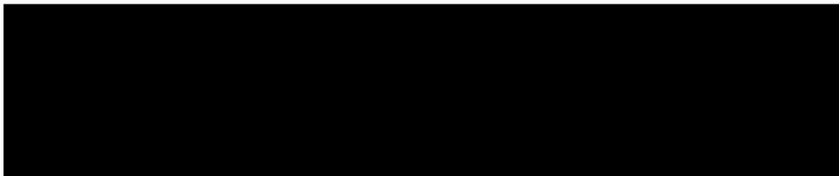
Date: **MAY 22 2008**

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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, Texas. The denial of the LIFE Act application was appealed to the Administrative Appeals Office (AAO) and dismissed. This case will be reopened pursuant to the regulations at 8 C.F.R. § 103.5(b) which provide that the AAO may of its own volition (sua sponte) reopen or reconsider a decision under section 245A of the Immigration and Nationality Act (Act), and by extension section 1140 of the LIFE Act, and the previous dismissal of the appeal shall be withdrawn.<sup>1</sup> The appeal is again before the AAO and will be dismissed.

The district director determined that 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, as required by section 1104(c)(2)(B) of the LIFE Act. Therefore, the district director concluded the applicant was ineligible for permanent resident status under the LIFE Act and denied the application.

On appeal, counsel contends that the applicant has submitted sufficient credible evidence to demonstrate her continuous residence in this country during the requisite period. Counsel submits documentation in support of the applicant's appeal.

An applicant for permanent resident status must also establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. Section 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).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an

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<sup>1</sup> The AAO dismissed the appeal as frivolous. On motion, counsel submits evidence that a brief was timely filed subsequent to the filing of the appeal, but due to Service error, the brief was not entered into the record of proceedings. The AAO accepts the evidence of timely filing of the brief submitted in support of the appeal.

official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of information contained in the attestation.

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.* at 80. 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, 431 (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 issue to be examined in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the entire requisite period. Here, the applicant has failed to meet this burden.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act), on June 7, 1990. At part #33 of the Form I-687 application, where applicants were asked to list all residences in the United States since the date of their first entry, the applicant listed ██████████ in Mission, Texas from 1981 to May 1985 and ██████████ ██████████ Dallas, Texas from May 1985 to May 1989. At part #34 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc., the applicant listed “NONE.”

In support of her claim of continuous residence in the United States from prior to January 1, 1982, the applicant submitted an affidavit that is signed by ██████████ Ms. ██████████ declared that she had known the applicant since May 1985 and that she seemed to be a person of good moral character. Although ██████████ testified that she had known the applicant since May 1985, she failed to provide any specific and verifiable testimony relating to the applicant’s residence in this country since such date. In addition, ██████████ failed to attest to the applicant’s residence in the United States from prior to January 1, 1982 up through May 1985.

The applicant included an affidavit signed by ██████████ who stated that she became acquainted with the applicant in January of 1981 at which time the applicant resided at ██████████ in Mission, Texas. ██████████ noted that she has since seen the applicant on a daily basis and

the applicant had resided in the United States during all the time she had known her. While Ms. [REDACTED] provided an address of residence for the applicant that matches in part the address listed by the applicant as her residence in the United States from 1981 to May 1985, she failed to offer any other relevant and detailed testimony to corroborate the applicant's claim of residence in this country for the requisite period despite claiming that she has seen the applicant on a daily basis since January 1981.

The applicant provided an affidavit that is signed by [REDACTED]. Ms. [REDACTED] asserted that she had personally known the applicant since June of 1986. However, [REDACTED]'s testimony is general and vague and cannot be considered as probative because it lacks specific and verifiable information to substantiate the applicant's claim of residence in the United States since prior to January 1, 1982.

Subsequently, on May 20, 2002, the applicant filed her Form I-485 LIFE Act application. At part #3C of the Form I-485 LIFE Act application where applicants were asked to list their memberships in or affiliations with every political organization, association, fund, foundation, party, club, society, or similar group, the applicant listed "NONE."

In support of her claim of continuous residence since prior to January 1, 1982, the applicant included an affidavit that is dated April 10, 2002 and signed by [REDACTED]. Ms. [REDACTED] stated that she currently resided at [REDACTED] in Mission, Texas and the applicant lived in her residence from January 1982 to December 1985. However, [REDACTED] failed to provide the address of the residence where she and the applicant purportedly lived together in the period from January 1982 to December 1985. In addition, [REDACTED] failed to attest to the applicant's residence in the United States prior to January 1982 and subsequent to December 1985.

The applicant included an affidavit dated April 2, 2002 that is signed by [REDACTED]. Ms. [REDACTED] noted that she had known the applicant for some twenty-five years beginning when both she and the applicant lived in Mexico. Ms. [REDACTED] declared that she and the applicant cleaned houses in the same neighborhood during an unspecified period and that she later became reacquainted with the applicant when the applicant applied for a job at her place of work approximately eight years before the affidavit was executed. Regardless, [REDACTED] failed to provide any direct testimony regarding the applicant's residence in the United States in that period from prior to January 1, 1982 to May 4, 1988.

On March 24, 2004, the district director issued a notice of intent to deny to the applicant informing her of CIS's intent to deny her application because she failed to respond to a request for evidence of continuous unlawful residence in the United States from January 1, 1982 through May 4, 1988. While the district director mistakenly failed to acknowledge and address the evidence that the applicant had previously submitted in support of her claim of residence, such action must be considered as harmless error because the AAO conducted a de novo review of this evidence, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.12(e). The applicant was granted thirty days to respond to the notice.

In response to the notice of intent to deny, the applicant provided an affidavit signed by [REDACTED] who stated that she had known the applicant since June 1985 when the applicant was living at [REDACTED] in Mission, Texas. Ms. [REDACTED] claimed that the source of her knowledge relating to applicant's residence was based upon the fact that she was a family friend of the applicant. However, [REDACTED] testimony regarding the applicant's place of residence as of June 1985 directly contradicted the applicant's testimony that she resided at [REDACTED] Dallas, Texas beginning in May 1985 through at least the end of the requisite period on May 4, 1988 on the Form I-687 application. Further, the address of residence attributed to the applicant by Ms. [REDACTED] in Mission, Texas, did not correspond to that address, [REDACTED] in Mission, Texas, listed by the applicant as her residence from 1981 to May 1985 at part #33 of the Form I-687 application. Additionally, [REDACTED] failed to attest to the applicant's residence in the United States from prior to January 1, 1982 up through June 1985.

The applicant submitted an affidavit that is signed by [REDACTED] Ms. [REDACTED] noted that she had known the applicant through family friendship since 1984 through April 11, 2004 the date the affidavit was executed. Ms. [REDACTED] indicated that the applicant resided at [REDACTED] in Mission, Texas when they initially met in June of 1984. While the applicant also testified that she was living in Mission, Texas from 1981 to May 1985 on the Form I-687 application, the address she listed as her residence did not match the address of residence attributed to the applicant by Ms. [REDACTED]. Moreover, [REDACTED] did not provide any testimony relating to the applicant's residence in this country since before January 1, 1982 up through that date she and the applicant met in June 1984.

The applicant included three affidavits that are signed by [REDACTED], and [REDACTED] respectively. All three affiants indicated that they had known the applicant since birth because of family relationships and that as of June 1983 she was living at [REDACTED] in Mission, Texas. However, none of the affiants attested to the applicant's residence in the United States from prior to January 1, 1982 up through June 1983. In addition, the address of residence attributed to the applicant by these three affiants, [REDACTED] in Mission, Texas, did not correspond to that address, [REDACTED] in Mission, Texas, listed by the applicant as her residence from 1981 to May 1985 at part #33 of the Form I-687 application.

The district director determined that the applicant failed to submit sufficient credible evidence demonstrating her residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988, and, therefore, denied the Form I-485 LIFE Act application on June 19, 2004.

On appeal, the applicant provided three new documents in support of her claim of residence in the United States since prior to January 1, 1982. The applicant included an affidavit that is signed by [REDACTED]. Ms. [REDACTED] asserted that she employed the applicant as a maid for \$60.00 per week from June 1985 to March 1986. Ms. [REDACTED] declared that the applicant resided at [REDACTED] in McAllen, Texas during that period she employed the applicant. However, [REDACTED] testimony that the applicant resided in McAllen, Texas from June 1985 to March 1986 directly contradicted the applicant's testimony relating to her addresses of residence in the United States as the applicant has never claimed that she lived in McAllen, Texas prior to, during, or subsequent to the requisite period.

The applicant provided two letters containing the letterhead of Saint Joseph the Worker Church in McAllen, Texas that are signed by [REDACTED] and [REDACTED] respectively. Mr. [REDACTED] listed his position as pastor and [REDACTED] listed her position as bookkeeper. Both Mr. [REDACTED] and [REDACTED] noted that the applicant lived within the parish of this church on [REDACTED] from 1978 to 1981. However, the testimony of [REDACTED] and [REDACTED] is in direct conflict with the applicant's testimony as the applicant claimed that she began residing in the United States in 1981 rather than 1978 and never included a [REDACTED] address in her listings of her addresses of residence in this country. Further, a review of both part #34 of the Form I-687 application and part #3C of the Form I-485 LIFE Act application where applicants were asked to list memberships, affiliations, and associations reveals that the applicant listed "NONE" rather than listing any membership in or affiliation with Saint Joseph the Worker Church in McAllen, Texas. The applicant failed to provide any explanation for this discrepancy.

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 visa petition. 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. 582, 591-92 (BIA 1988).

The absence of sufficiently detailed supporting documentation and the conflicting nature of testimony relating to critical elements of the applicant's residence seriously undermine the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet her burden of proof in establishing that she has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E-- M--*, 20 I&N Dec. 77.

Given the applicant's reliance upon documents with minimal or no probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, 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.