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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: DALLAS Date: APR 25 2008

MSC 01 348 60127

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. Specifically, the director determined that the applicant had failed to submit sufficient evidence to establish his presence in the United States prior to 1986.

On appeal, counsel contends that the applicant is *prima facie* eligible for the classification sought, and attempts to justify the deficiencies in the evidence noted by the director in the denial. In addition, counsel submits additional evidence, including new affidavits, in support of the appeal.

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 AAO concurs with the director's finding that the applicant submitted sufficient evidence to establish continuous residence and physical presence in the United States after 1986. Specifically, the record contains evidence of the applicant's employment from 1986 to 1988, State identification cards for 1987 and 1988, Western Union receipts for 1987, and his marriage certificate showing he was married in Texas in April 1988. Therefore, the issue on appeal is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States from before January 1, 1982 through March 6, 1986.[1]

In the affidavit for class membership, which he signed under penalty of perjury on November 1, 1990, the applicant stated that he first arrived in the United States in December 1981 when he crossed the border without inspection. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury on October 31, 1990, the applicant claimed to live at [redacted], Dallas, Texas, 75215 from December 1981 to August 1988.

He further claimed to be employed by the following companies during the relevant period:

December 1981 to February 1986:	Belsley Properties, Laborer
March 1986 to September 1988:	Swan Services, Inc., Laborer

[1] The evidence in the record contains an employment verification letter as well as pay stubs from Swan Services, Inc., which demonstrate that the applicant began working for the company on March 5, 1986.

As stated above, the record contains sufficient evidence to establish the applicant's presence in the United States from 1986 to May 4, 1988. Therefore, the AAO will review the record for evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 to March 5, 1986.

On the addendum to Form I-485, the applicant stated that he was eleven years old when he came to the United States. He claimed that he began working the day after his arrival and has worked ever since that time. He further claimed that he did not attend school during this period.

In an attempt to establish continuous unlawful residence during this period, the applicant furnished the following evidence:

(1) Undated memorandum from [redacted] of Belsley Properties, claiming that the applicant worked under her supervision doing carpentry work from December 1981 to February 1986.

(2) Affidavit dated August 3, 2002 by [redacted], claiming that he has known the applicant since 1982. He claimed that he resided next door to the applicant on [redacted] from 1982 to 1987.

(3) Statement dated August 7, 2002 by [redacted] claiming she has known the applicant since 1982.

(4) Affidavit dated August 3, 2002 by [redacted], claiming that he has known the applicant since 1982 and that the applicant has continuously resided in the United States since that time.

(5) Affidavit dated July 27, 2002 by [redacted], claiming that he has known the applicant since December 1981. The affiant provides no detailed information regarding his home address; therefore, it is unclear if he is the same person as [redacted], above.

(6) Affidavit dated October 29, 1990 by [redacted], claiming that he has known the applicant for 9 years (since December 1981).

(7) Second affidavit by [redacted] dated July 20, 2002, claiming that he has known since December 1981 when the applicant moved in with him at [redacted] He further claims that the applicant has been living in Texas since that time.

(8) Statement dated October 2, 1989 by [redacted], secretary of Swan Services, confirming that the applicant was employed as a supervisor/janitor for the company from March 5, 1986 to September 1, 1988. The record includes pay stubs which corroborate this claim.

(9) Affidavit dated March 19, 1990 by [redacted], claiming that the applicant was his tenant at [redacted] from March 26, 1986 to August 28, 1988.

(10) Ten copies of pay stubs, evidencing wages paid to the applicant from March 6, 1986 through April 28, 1988. Although the pay stubs do not include the name of the employer, they correspond with the statement of [redacted] who claimed that the applicant began working for Swan Services in March of 1986. A Form W-2, issued by Swan Services to the applicant for 1986, further supports this contention.

(11) Request to Employee for Social Security Information for 1986 from the Social Security Administration, indicating that the wages paid to the applicant by Swan Services were reported under a social security number that differed from their records.

On April 20, 2004, CIS issued a Notice of Intent to Deny the application. The district director noted that the record did not contain credible and verifiable evidence that the applicant continually resided in the United States since before January 1, 1982 through May 4, 1988. The director noted that although the applicant had submitted new affidavits after additional evidence was requested during his interview, no updated employment letters or other documentation had been submitted.

In response, counsel for the applicant submitted a letter dated May 4, 2004, alleging that the affidavits and letters previously submitted clearly established that the applicant had continually resided in the United States since before January 1, 1982 through May 4, 1988. Counsel stated that "we don't understand the reason for this decision," and claims that prior to 1986, the applicant has proved his physical presence with the affidavits listed above, since he did not start working for a company until 1986.[2] Furthermore, counsel contends that the applicant did not attend school and has no other physical evidence such as vaccination records. Finally, counsel contends that any evidence he did have pertaining to this time period was destroyed in a house fire in 1986. Counsel contends that in the absence of other documentation pertaining to the relevant period, the AAO should accept the affidavits as evidence of the applicant's continuous unlawful residence since before January 1, 1982 through March 5, 1986.

The director denied the application on June 15, 2005, noting that while the evidence in the record supported a finding that the applicant was present in the United States subsequent to 1986, there was insufficient evidence to show that he unlawfully entered the United States as claimed in December 1981 and continuously resided therein in an unlawful status until 1986. On appeal, counsel for the applicant submits a brief statement on Form I-290B as well as two new affidavits from the applicant and [redacted]

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

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[2] The AAO notes that despite counsel's claim that "it was not until March, 1986 that [the applicant] started working for a company," the record contains an employment letter from Belsley Properties, claiming that the applicant worked there from December 1981 until February 1986. 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 "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 that he entered the United States in December 1981, he likewise claims that he 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. The applicant claimed on the addendum to Form I-485 that he entered the United States with an older cousin, and stayed with a much older cousin upon his arrival. However, the applicant failed to provide affidavits from these two relatives who appear to have first-hand knowledge of the circumstances surrounding the applicant's entry into the country. Although the applicant provides several affidavits in support of his presence during the early part of the relevant period, none of the affiants make reference to or verify the applicant's claim of illegal entry into the country in December 1981.

Moreover, the record contains Optional Form 230, Application for Immigrant Visa and Alien Registration, executed under oath by the applicant on March 22, 1990. On this form, the applicant contends that he resided in Mexico D.F. from 1983 to 1984, and that he entered the United States in March 1984 without inspection. These statements directly contradict his previous claim that he first entered the United States in December 1981. The applicant claimed to reside continuously in an unlawful status in the United States since December 1981 and made no mention of a return trip to Mexico. Therefore, these statements executed under penalty of perjury cast doubt upon the validity of the applicant's claims. 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). There is insufficient evidence to definitely establish that the applicant entered the United States prior to January 1, 1982.

Additionally, the applicant provided an employment verification letter from of Belsley Properties. In this brief letter, claimed that the applicant worked for the company from December 1981 to February 1986 doing carpentry work, and received $6.00 per hour. Attempts by CIS to verify the statements provided were unsuccessful as the company is no longer in business.

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 letter from Belsley Properties omits the applicant's address at the time of employment, periods of layoff, the applicant's duties, and whether the information was taken from company records. It further did not 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.

In addition, the applicant claimed on Form G-325-A, Biographic Information, that he worked for Swan Services, Inc. from March 1984 to present. He further claims on this form that he resided in Mexico from 1983 to March 1984. These statements directly contradict the claim set forth in the employment letter.

Moreover, the above-referenced letter claims that the applicant received $6.00 per hour. The record likewise indicates that during the period of claimed employment, the applicant was between the ages of eleven to fifteen. Minimum wage in Texas was $1.40 per hour in 1981.[3] By 1988, the minimum wage increased to $3.35. In addition to the other deficiencies in this letter cited above, the AAO finds it highly unlikely that a child not of legal working age would receive nearly twice the minimum wage during this period.[4] If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The inference to be drawn from the documentation provided shall depend on the extent of the documentation. Although affidavits of acquaintances have been submitted, the unresolved inconsistencies noted above have not been clarified by the applicant. These 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

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[3] *See* http://www.dol.gov/esa/programs/whd/state/stateMinWageHis.htm

[4] It is further noted that the current minimum wage in the State of Texas is $5.85 per hour.

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 upon with the applicant relies claim to have known the applicant since December 1981 or simply 1982. Other than the affidavit of [redacted], dated July 20, 2002, which claims that he has known the applicant since December 1981 when the applicant moved in with him a[redacted] none of the affidavits provide the basis of their knowledge of the applicant or the origin of the information to which they attest. Most omit the applicant's addresses during the period, and provide minimal information regarding the means in which they may be contacted. Moreover, the affidavit by [redacted] claims that he resided next door to the applicant on [redacted] from 1982 to 1987. However, the applicant contends that his residence burned sown in 1986. Finally, all of these affidavits contradict the applicant's claims on Optional Form 230, in which he claims that he resided in Mexico from 1983 to 1984. 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.

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 he continuously resided in the United States in an unlawful status since before January 1, 1982 through 1984. 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.