U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

L2

[redacted]

FILE: [redacted] Office: DALLAS Date: FEB 21 2008

MSC 02 026 60371

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 National Benefits Center. If your appeal was sustained, of if the matter 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, Texas, and is now before the Administrative Appeals Office (AAO) 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 from before January 1, 1982 through May 4, 1988.

On appeal, counsel submits a brief and additional documentation.

Section 1104(c)(2)(B) of the LIFE Act states:

> (i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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).

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 district 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 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.

Although the 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. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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 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).

Nevertheless, an affidavit not meeting all the foregoing requirements may still merit consideration as "any other relevant document" pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must be on employer letterhead stationery, if the employer has such stationery, and must include the following:

(A) Alien's address at the time of employment;
(B) Exact period of employment;
(C) Periods of layoff;
(D) Duties with the company;
(E) Whether or not the information was taken from official company records; and
(F) Where records are located and whether the Service may have access to the records.

The regulation further allows that if official company records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and explaining why such records are unavailable may be submitted in lieu of meeting the requirements at (E) and (F) above.

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

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence throughout the application process:

- A notarized affidavit, dated April 26, 1990, from [redacted] stating that the applicant resided at [redacted], Mission, TX from January 1981 to October 1984. [redacted] states that she knew the applicant resided and maintained a residence at that address because they were roommates.

- A notarized affidavit, dated April 27, 1990, from [redacted] stating that the applicant had worked for him part-time at his establishment, [redacted] and also as his housekeeper, since October 1984.

- A notarized affidavit, dated April 26, 1990, from [redacted] stating that the applicant had lived with her at [redacted], TX from October 1984 to October 1987, and at [redacted], Dallas, TX from October 1987 to July 1989.

- A notarized affidavit, dated April 28, 1990, from [redacted] stating that the applicant resided at [redacted], Dallas, TX since July 1989. Mr. Roque stated that he had lived with the applicant for 3 years as of the date of the affidavit.

- A notarized affidavit, dated April 6, 2005, from [redacted] stating that the applicant had been his son's babysitter off and on for a few years until 1990, and that he is aware that she has been in the United States since 1984.

- A notarized affidavit, dated April 6, 2005, from [redacted] stating that she and the applicant had been friends since 1984, and that she is aware that the applicant has been in the United States since that date.

On March 22, 2005, the district director issued a Notice of Intent to Deny (NOID) noting that the applicant had been requested to submit additional evidence proving her unlawful presence in the United States during the required time period when she was interviewed on September 30, 2002, but had provided no new evidence. The director also noted that the applicant had submitted only one employment letter claiming that she was employed from 1984 through 1990 at [redacted] Store; however, Texas state records did not show a corporation under this name. The district director granted the applicant 30 days to submit additional evidence. In response, counsel for the applicant submitted a brief stating that the affidavit from [redacted] contained his phone number and the actual address of the business, [redacted] Counsel stated that "one can easily determined that it is very likely that the name of the business changed names and or owners" and that "[a] search of state records will reveal that a grocery store indeed sits in the exact location detailed in the affidavit." In support of the appeal, counsel submitted the above-noted affidavits from Mr. [redacted] and [redacted] dated April 6, 2005.

In a decision to deny the application the director noted that the applicant had only submitted one affidavit (from [redacted], above) attesting to the applicant's entry into the United States in 1981, and had provided no additional evidence to support that claim. The director denied the application on September 12, 2005, after concluding that the applicant had failed to provide sufficient evidence to establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date through May 4, 1988.

On appeal, counsel submits the following additional documentation:

A notarized affidavit, dated October 18, 2005, from stating that he knows the applicant came to the United States in 1981 – first living in Mission Texas, before moving to Dallas, Texas.

- An un-notarized letter, dated October 3, 2005, from [redacted] stating that she is the applicant's cousin, has known the applicant all her life, that she (Ms. [redacted] left Mexico in August 1979, and saw the applicant again in June 1981 in Mission, Texas. further states that she spent a couple of summers with the applicant in Mission, Texas, between 1981 and 1984.

  A notarized affidavit, dated October 18, 2005, from [redacted] stating that he met the applicant in January 1981 when she came to rent at the same house where he lived, located at [redacted] Mission, Texas.

  Photographs of the applicant, allegedly taken in Dallas, Texas, some of which contain a hand-written notation on the reverse of "Dallas 1985" and "Dallas 1985"

The applicant has failed to remedy the insufficiency in the evidence pointed out by the director in the decision. As evidence of entry into the United States in unlawful status prior to January 1, 1982, the applicant has submitted three third-party letters - from [redacted] and [redacted] – who claim to have met the applicant in Mission, Texas in 1981. [redacted] the applicant's cousin, states that she "saw" the applicant in Mission, Texas in 1981 and "spent a couple of summers with her" there between 1981-1984. However, [redacted]'s statement is not notarized, and does not provide the address(es) where the applicant resided during that time. Other than stating that he met her in Mission, Texas in 1981, does not indicate the specific dates during which he has known the applicant. None of the affidavits submitted demonstrate personal firsthand knowledge of the applicant's residency in the United States for the entire qualifying period and are of minimal probative value. Furthermore, for the most part, the photographs submitted cannot be identified with any particular location, and none can be identified with a specific date; thus, they are also of little, if any, probative value. Finally, the applicant failed to establish that Swifty's Grocery Store, in fact, existed.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the insufficiencies in the evidence, the AAO determines that the applicant has not met her burden of proof. The applicant has not established, by a preponderance of the evidence, that she entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously

since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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