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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

L 2

[redacted]

FILE: [redacted] Office: HOUSTON Date: FEB 29 2008

MSC 02 243 61389

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. The file has been returned to the National Benefits Center. If your appeal was sustained, or 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, Houston, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish that he entered the United States before January 1, 1982, and continuously resided in the United States in an unlawful status since that date through May 4, 1988.

On appeal, counsel asserts that the applicant submitted sufficient evidence and is, in fact, eligible for adjustment of status under the LIFE Act. Counsel further asserts that the applicant was not outside the United States for more than 180 days in the aggregate or more than 45 days in one trip during the requisite statutory period.

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.

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1), as follows: An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

Although this term is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means "coming unexpectedly into being." The applicant has not submitted any evidence to establish that an emergent reason delayed her return to the United States.

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 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.

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).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing entry into the United States before January 1, 1982, and continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

In the Notice of Intent to Deny (NOID), dated October 25, 2004, the director stated that the applicant failed to submit any credible documentary evidence establishing his claimed entry into the United States prior to January 1, 1982. and continuous unlawful residence since such date through May 4, 1988. Specificall the director noted that the applicant's sister and brother-in-law, [redacted] and [redacted] submitted letters stating that their previous affidavits were either fraudulent or forged. The director also noted the applicant's absence from the United States, from March 1988 through May 1988, exceeded the number of days permitted to be absent from the United States in a single absence. Based on the statements of the above affiants, the director determined the applicant lacked credibility and denied his application. The director granted the applicant thirty (30) days to submit a rebuttal or additional evidence.

In response to the NOID, the applicant submitted a sworn affidavit, dated November 23, 2004. He provided a detailed and extensive account of his time in the United States, his relationship with his sister and brother-in-law, and his brief absence from the United States in 1988.

The applicant stated that he first entered United States when he was 11 years old with his brother [redacted] on December 28, 1981. The applicant stated that he got a job cleaning tables at [redacted] in Houston, Texas, for the owner, [redacted] The applicant further stated that he lived with and house sat for [redacted] from 1981 to 1984. From 1985 to 1986, the applicant stated he lived with [redacted] and [redacted] his sister and brother-in-law in Lansing, Michigan. In Michigan, he stated that he worked at [redacted] In late 1986, the

applicant stated that he moved back to Houston, Texas, and lived with th until 1990. In 1987, the applicant stated that he worked for [redacted] again until the applicant opened a construction company. The applicant stated that he went to visit his mother, who had been in a severe car accident in Mexico, in 1988.

He also explained at length his relationship wit[redacted] and [redacted] He described how his relationship with the [redacted] deteriorated due to family domestic issues, and as a result, [redacted] filed allegations against the applicant. The [redacted] filed several charges against the applicant, including assault and child abuse charges, as well as filed letters with the Department of Food Stamps. The child abuse charges were dropped and the Department of Food Stamps brought no charges against the applicant.

In the Notice of Decision, dated January 4, 2005, the director determined that the rebuttal failed to overcome the reasons for denial stated in the NOID. The director denied the instant application and determined that the applicant was ineligible for adjustment of status under LIFE Legalization.

In support of his application, the applicant submitted the following affidavits as evidence of his entry into the United States before January 1, 1982, and continuous unlawful residence through May 4, 1988.

1. A November 22, 2004, sworn to and subscribed affidavit by [redacted] owner of [redacted] (formerly known as [redacted] in Houston, Texas. The affiant stated that he met the applicant on December 31, 1981, when he came looking for employment at his restaurant. The applicant started to work on January 1, 1982, cleaning tables and later as a waiter. The applicant worked from January 1982 to December 1984 and then again from February 1987 to July 1996. The affiant also stated that the applicant asked permission to travel and be absent from work in 1988, but the affiant did not recall the exact dates. The affiant has known the applicant for approximately 24 years and sees him every few months when he comes in to visit the restaurant. The affiant provided the company's address and telephone number. The record also contains an April 12, 1990, affidavit by the affiant on company letterhead, which stated similar information and confirmed employment up to 1990.

2. A November 22, 2004, sworn to and subscribed affidavit by [redacted] who stated that she met the applicant on December 31, 1981, when he was looking for employment at [redacted]. She stated that he went to Mexico to see his sick mother from April 25, 1988 to May 1, 1988. She further stated that she saw the applicant on a weekly basis when he used to work at the restaurant cleaning tables and later as a waiter. She provided her address of residence and telephone number.

3. A November 22, 2004, sworn to and subscribed affidavit by who stated that he met the applicant on December 31, 1981, when he was looking for employment at [redacted] He stated that the applicant went to Mexico to see his sick mother from April 25, 1988 to May 1, 1988. He further stated that he saw the applicant on a

[redacted]

weekly basis when he used to work at the restaurant cleaning tables and later as a waiter. She provided her address of residence and telephone number. The record also contains an August 2, 1994, affidavit by the affiant, which stated similar information regarding how they met and the applicant's trip to Mexico.

4. An April 11, 1990, sworn to and subscribed affidavit by [redacted] who stated that the applicant has resided in the United States since December 1981 to December 1984. The applicant lived continuously in his house at [redacted] in Houston, Texas. The affiant stated that the applicant worked the whole time and was paid in cash.

5. A May 28, 2002, subscribed and sworn affidavit by [redacted], who stated that he met the applicant at [redacted] where the applicant worked on December 31, 1981. The affiant has known the applicant since this time and confirmed the applicant's residence at [redacted] in Houston, Texas. He sees the applicant on a weekly basis. He stated that the applicant left for Mexico from April 25, 1988 to May 1, 1988, and on July 1992 to August 1992 to visit his sick mother. The affiant provided his address of residence and telephone number.

6. A May 29, 2002, subscribed and sworn affidavit by [redacted] who stated that he met the applicant at [redacted] in 1981 and has known him since that time. The affiant stated that, when they met, the applicant resided at [redacted] in Houston, Texas. The affiant stated that the applicant left from April 25, 1988 to May 1, 1988 to visit his sick mother in Mexico. The affiant stated that they are close friends and he sees the applicant on a monthly basis. The affiant provided his address of residence.

7. A January 31, 2005, two page sworn declaration by [redacted] who stated that the applicant resided in the United States since December 30, 1981. She stated that she met him just after she turned nine (9) years old. Her date of birth is December 23, 1972. She used to play with the applicant when he lived with [redacted] When she was older, she married the applicant's brother, [redacted] and became very close to the applicant's family. She confirmed that the applicant has lived in Houston ever since they first met. She verified that the applicant worked for [redacted] for some time. She provided her address and telephone number.

   The affiant also submitted a notarized August 1, 1994, sworn and subscribed affidavit. She stated that she met the applicant on December 30, 1981, and that he left the United States for a visit to Mexico on April 25, 1988 to May 1, 1988. The affidavit includes a copy of her business card from [redacted] which indicates that she was a manager at the company.

The applicant has submitted numerous affidavits in support of his application. However, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits include any supporting documentation of the affiant's identity or presence in the United States during the requisite period. None of the affiants provided any credible,

contemporaneous evidence of the applicant's residence in the United States during the requisite period. [redacted], the applicant's employer for approximately 12 years, failed to provide any documentation to support his assertion, such as company records, salary records, etc. The applicant claims he entered the United States in December of 1981, when he would have been 11 years old. He failed to submit vaccination or school records. The absence of sufficiently detailed and supporting documentation to corroborate the applicant's claim of continuous residence for the requisite period seriously detracts from the credibility of his claim.

The record also contains an April 20, 1990, sworn affidavit, by [redacted]. [redacted] stated that the applicant lived with her from 1985 to the present (April 20, 1990). In a subsequent letter, dated January 9, 1994, [redacted] stated that the applicant falsified documents in order to obtain residency under current United States amnesty provisions. She stated that the applicant had only lived with her for a couple days or months, not years, because he had to go back to Mexico. She further stated that in 1985 the applicant stayed for only 5 days before he went back to Mexico, and it was not until 1990 that he stayed with her for about 6 months. [redacted] stated that she did not come forward with this information previously due to familial loyalty and because she felt obligated to help the applicant. She declared that the applicant entered the United States for the first time in July 1985, and visited with a tourist visa on various occasions during the years that followed. She further asserted that the applicant committed tax fraud and obtained false license plate stickers. Finally, she noted that the applicant's common law wife, [redacted], was also in the United States illegally and had connections with a cocaine trafficker.

[redacted] also provided documentation to prove the applicant was not in the United States prior to 1985. She provided a copy of an alleged forged letter in her husband's name, [redacted] dated April 30, 1990. The letter indicated that [redacted] supervised the applicant in a catering operation in Michigan at [redacted] from 1985 to 1986. The letter also contained a copy of the affiant's business card, with his employment address and telephone number. [redacted] asserted that her husband never signed this letter and her brother changed the year. She further wrote that her husband only worked at the restaurant for one day.

In a subsequent March 22, 1993, letter, [redacted] asserted that the applicant had forged his signature on the April 30, 1990, letter in an effort to obtain immigration documents. [redacted] also stated that the applicant committed tax fraud, assault, indecency, insurance fraud and welfare fraud. The affiant provided his address of residence and telephone numbers. The affiant also sent copies of the letter to the Attorney General, a U.S. Senator and a Congressman.

Finally, in order to prove that the applicant had not been in the United States before 1985, [redacted] provided what appears to be letters from Mexico sent by the applicant. The letters, which appear to be written by the applicant but cannot be confirmed, do not include any dates to confirm the time period.

It is incumbent upon the applicant to resolve any discrepancies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless

the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record does not contain any independent, objective evidence to explain the above discrepancies. The record does contain the following affidavits which address the discrepancies.

a. A January 31, 2005, sworn affidavit by [redacted], sister of the applicant, who stated that the applicant came to the United States in December 28, 1981. The affiant described her memory of the applicant leaving and the reasons for his departure. She stated that he worked in a restaurant when he first arrived. She further stated that the applicant visited their mother, who was in a car accident, in Mexico in 1988. The affiant recalled that the applicant visited for less than one month because he had to go back to work.

She described her understanding of the dispute between the applicant and the [redacted]. She stated that [redacted] started to see another woman at his work, while married to [redacted] tried to involve the family in the problem, but nobody wanted to get involved. [redacted] got very upset and lashed out at the applicant. [redacted] and the applicant got along fine before the incident and even wrote letters for his residency confirming his work and presence in United States. [redacted] started to resolve their problems and the applicant frequently babysat the [redacted]s' children. When applicant's newborn arrived, the applicant could not watch his nephews anymore. This upset [redacted]. [redacted] and [redacted] fought and [redacted] pressed charges that the applicant molested her children. The affiant stated that this charge was a lie. At trail, the judge found [redacted] to lack credibility and acquitted the applicant. [redacted] concocted more lies about the applicant by sending letters to the Immigration and Nationality Service, and alleging that the applicant was not in United States before January 1982. The affiant stated that this was a "blatant lie." The affiant confirmed that the applicant was in United States since December 28, 1981, and that she has visited him many times since 1982.

b. A January 31, 2005, sworn affidavit by [redacted], mother of the applicant, who stated that the applicant left her house to immigrate to the United States in late December of 1981 for economic reasons. She stated that the applicant was only 11 years old, but very mature and determined to succeed and help his family in Mexico. She described her understanding of the dispute between the applicant and the [redacted]

She stated that [redacted] had an affair. [redacted] wanted the family to get involved, but no one wanted to get involved. In 1994, [redacted] bought affiant an airplane ticket to Houston. [redacted] wanted the affiant to get involved, but affiant did not. As a result, [redacted] became angry with the affiant. The affiant has not spoken to [redacted] since 1994.

She further stated that after the affair, [redacted] started to resolve their problems. During that time, the applicant and [redacted] would babysit the [redacted] children. When the applicant's child was born, the applicant could no longer babysit the [redacted] children. As a result, the [redacted] became upset. [redacted] and [redacted] fought. She stated that [redacted] charged the applicant, but the judge let the applicant go. The [redacted] were still angry at the applicant and sent false letters to immigration.

She further stated that, in 1988, she was crossing street in Mexico City when a car ran a red light. She stated that she knows the applicant came to visit her but she does not remember much about his visit or about that time.

c. A November 22, 2004, sworn affidavit by [redacted]z, attorney in the State of Texas, who stated that she represented the applicant in the case of The State of Texas v. [redacted] cause number [redacted] She stated that the complainant was Ms. [redacted] the case proceeded to trial and the applicant was found not guilty. She also stated that [redacted] made allegations that the applicant assaulted her and that he acted in a sexually inappropriate manner towards her son. The affiant stated that the applicant was found not guilty of assault and the Harris County Sheriff's Department, Child Abuse Division, investigation resulted in no charges filed against the applicant. Finally, the affiant stated that it was apparent that [redacted] was determined to hurt the applicant at any cause.

Due to the nature of the relationship of the affiants with the applicant, the AAO does not consider these affidavits to be independent, objective evidence. The familial relationship casts doubt on the credibility of the applicant's sister and mother. The affidavit of [redacted]z provides minimal probative value due to the inherent adversarial nature of such a case. Even if taken at face value, [redacted]s affidavit does not prove the applicant's resided in the United States during the requisite period, but merely confirms that a dispute existed between the applicant and the [redacted]

The record contains a photocopy of a Banamex application for transfer of funds in Houston, Texas, dated March 3, 1982. The application indicates that the applicant transferred funds to [redacted] in the amount of $895.00. This one photocopy of a document does not establish that the applicant entered before January 1, 1982, nor does it establish his continuous unlawful residence during the requisite period.

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. While the applicant has submitted numerous affidavits in support of his claim, the lack of contemporaneous documentation detracts from the applicant's claim. There are no dental, medical or vaccination records. An affidavit from the applicant's brother, who the applicant claims to have traveled with to the United States, is conspicuous in its absence. Also, the inconsistent statements by the [redacted] bring into question the credibility of the applicant. Based on the totality of the evidence, the applicant has

failed to establish entry into the United States from before January 1, 1982, and continuous unlawful residence through May 4, 1988.

With regard to the applicant's absence in 1988, the applicant initially stated that he was absent from the United States from March 1988 to May 1988. The applicant later corrected the dates of his absence from April 25, 1988 to May 1, 1988, which was confirmed by his numerous affiants. The AAO finds that the applicant's absence of six days did not exceed the permitted absence under 8 C.F.R. § 245a.15(c)(1).

Beyond the decision of the director, the record reflects that on March 13, 2000, the applicant was charged with *theft* in the District Court of Harris County, Texas. On January 5, 2001, the applicant was convicted of *theft*, in violation of section 12.44B of the Texas Penal Code, a Class B misdemeanor (Cause [redacted] The applicant was given a deferred adjudication of guilt, 6 months community supervision, and a fine of $100.00. This single misdemeanor conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

Therefore, based on the above discussion, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he 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.