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

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: SEATTLE Date: MAY 12 2008

MSC 02 204 60848

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: Self-represented

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.

for 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 (director) in Seattle, Washington. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that she resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988 and that she was continuously physically present in the United States from November 6, 1986 through May 4, 1988.

On appeal, the applicant submits several additional documents.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

"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." (Emphases added.)

"Continuous physical presence" is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: "An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States." (Emphasis added.) The regulation further explains that "[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States." (Emphasis added.) 8 C.F.R. § 245a.16(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 its amenability to verification. *See* 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 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).

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 applicant, a native of Mexico who claims to have lived in the United States since 1981, filed her application for legal permanent resident status under the LIFE Act (Form I-485) on April 22, 2002. At that time the only evidence in the record of the applicant's residence and presence in the United States during the 1980s were three affidavits prepared in September 1994 by acquaintances in California. Two of them, in identical fill-in-the-blank format, were from individuals who claim to have met the applicant in 1981 and know that she had resided since then at [redacted] in Pacoima, California. The other affidavit was from an individual who claims to have taken the applicant to the airport for a three-month trip to Mexico when a relative became ill.

Following her interview for LIFE legalization in February 2003, the applicant presented letters from two companies in Los Angeles and in North Hollywood, California, dated January 1, 1982 and January 1, 1985, respectively, who claim to have employed the applicant as a housekeeper during the 1980s.

On July 31, 2003, the director issued a Notice of Intent to Deny (NOID), indicating that the evidence of record did not establish the applicant's entry into the United States before January 1, 1982, her continuous unlawful residence in the United States through May 4, 1988, and her

continuous physical presence in the United States from November 6, 1986 through May 4, 1988. With respect to the employment letters the director noted that the district office had not been able to contact either company since the phone numbers were outdated and no contact person was identified. The applicant was granted 30 days to submit additional evidence, but no further documentation was received.

On July 31, 2006, the director denied the application on the grounds that the applicant failed to establish her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and her continuous physical presence in the United States from November 6, 1986 through May 4, 1988, as required to be eligible for legalization under the LIFE Act.

On appeal, the applicant submits two additional affidavits from residents of California, prepared in August 2006, one of whom claims to know that the applicant lived in Pacoima, California, from September 1984 to 1998, and thereafter in San Jose, and the other of whom claims to have known the applicant since 1981 and offered her a place to live when she first arrived at [redacted] in Los Angeles. The applicant also submits photocopies of three envelopes addressed to her at [redacted] in Pacoima, one with a postmark of October 20, 1988, and the other two with illegible postmarks, as well as an undated customer receipt.

The documentation submitted on appeal does not overcome the grounds for denial. Only one of the documents – the affidavit from [redacted] who claims to have offered residential quarters to the applicant in 1981 – can even be cited as evidence of that the applicant resided in the United States from before January 1, 1982 through May 4, 1988. address in Los Angeles was never previously mentioned by the applicant, however, who claimed in other documentation of record to have lived on [redacted] in Pacoima from the time she arrived in the United States. [redacted] does not indicate how long the applicant resided with him, did not identify any other addresses for the applicant after she lived with him, has not submitted any documentary evidence of his relationship with the applicant in the United States, such as photographs or letters, and has not submitted any documentation of his own identity and presence in the United States during the 1980s. The same shortcomings apply to the other affidavits submitted by the applicant. For the reasons discussed above, the affidavits in the record have little evidentiary weight.

The AAO also notes that the affidavit from [redacted] in 1994, stating that the applicant spent three months in Mexico visiting an ill relative, is consistent with the applicant's claim elsewhere in the record to have been absent from the United States for that particular purpose from August to October 1987. The duration of this absence raises questions as to whether it interrupted the applicant's continuous residence and continuous physical presence in the United States, as defined in 8 C.F.R. § 245a.15(c)(1) and 8 C.F.R. § 245a.16(b)(1).

The only documents in the record that are dated in the 1980s are the two employment letters. One is from the general manager of "Daily Express, su Correo Diario" in Los Angeles, dated

January 1, 1982, who states that the applicant "is working in our company since January 1981 as housekeeper," and the other is from the general manager of Freeland Travel in North Hollywood, dated January 1, 1985, who states that the applicant "is working in our company since January 1983 as housekeeper." The letters do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i), however, because they did not provide the applicant's address at the time of employment, did not describe the applicant's duties in detail, did not declare whether the information was taken from company records, and did not indicate whether such records were available for review. Furthermore, the general managers' signatures are illegible on both letters, and (as previously noted by the director) no other company officials are identified on the letters. The AAO also notes that the first employment letter from the "Daily Express" stated that the applicant had been working for the company since January 1, 1981, which conflicts with information provided elsewhere in the record that the applicant did not enter the United States initially until after the birth of her last child in Mexico on June 7, 1981. For reasons discussed above, the AAO concludes that the employment letters likewise have little evidentiary weight.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.*

Based on the foregoing analysis, the AAO concludes that the applicant has failed to establish that she resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, in accordance with section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.15(c)(1), and that she was continuously physically present in the United States from November 6, 1986 through May 4, 1988, in accordance with section 1104(c)(2)(C)(i)(I) of the LIFE Act and 8 C.F.R. § 245a.16(b). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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