U.S. Department of Homeland Security
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Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: Dallas Date: JAN 24 2005

IN RE: Applicant: [redacted]

PETITION: 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

[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 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, Director
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Interim 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 she had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, the applicant endeavors to resolve a question raised in the notice of denial regarding evidence she had submitted in support of her claim to continuous residence during the period in question.

Although a Notice of Entry of Appearance as Attorney or Representative (Form G-28) has been submitted, the individual is not authorized under 8 C.F.R. § 292.1 or § 292.2 to represent the applicant. Therefore, this decision will be furnished to the applicant only.

An applicant for permanent resident status must 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. 8 C.F.R. § 245a.11(b).

"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.

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).

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. *See Matter of E-- M--*, 20 I&N Dec. 77 (Comm. 1989).

Although 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).

In an attempt to establish continuous unlawful residence since prior to January 1, 1982, the applicant submits the following:

- An affidavit from [redacted] who attests to the applicant having resided with her at her home in Ft. Worth, Texas, from July 1987 to July 1988;

- Affidavits from [redacted] Our Lady of Victory Center, Ft. Worth, Texas, and from [redacted] both of whom affirm the applicant's claim to have resided with her aunt, [redacted] from 1987 to 1988;

- An affidavit dated June 25, 2003 from [redacted] who attests to having known the applicant for about 15 years, *i.e.* since 1988;

- Two separate affidavits from [redacted] the applicant's aunt, who attests to the applicant having lived and worked with the affiant from October 28, 1981 to July 4, 1987;

- An affidavit from [redacted] attesting to the applicant having resided with [redacted] from October 28, 1981 to July 4, 1987, during which time the applicant, along with Ms. [redacted] performed babysitting duties for the affiant;

- An undated letter from [redacted] The Church of Jesus Christ of Latter-Day Saints, Ft. Worth, Texas, who indicates that the applicant ha been an active member of that congregation for the past 6 years;

- An affidavit from [redacted] who attests to the applicant having performed babysitting duties for her from 1985 to 1987;

- A letter from the applicant's mother, [redacted] who asserts the applicant departed Mexico for the U.S. in October 1981, after which she resided with her aunt, [redacted] in Houston, Texas; and

- An affidavit dated June 1993 from [redacted] attesting to having known the applicant from more than 5 years and to the applicant having lived at various residences in the Ft. Worth, Texas area.

In the notice of intent to deny, the district director noted an apparent contradiction in the applicant's documentation. The aforementioned affidavits from [redacted] indicated that the applicant resided with and performed babysitting alongside [redacted] her aunt, from October 28, 1981 to July 4, 1987. However, when the applicant's aunt was telephonically contacted on November 22, 2003 by a Service officer for verification purposes, she purportedly stated that she thought the applicant came to the United States in 1986.

On appeal, the applicant attempts to explain this inconsistency by stating tha[redacted] esponse when contacted for verification purposes resulted from a misunderstanding and that what her aunt meant to communicate was that 1986 was the year the applicant departed the affiant's domicile in Houston, Texas for Fort Worth, Texas. Upon examining the record, the only transcript of this telephonic conversation consists of a post-it note attached to one [redacted] affidavits. The note reads as follows: "Talked w/[redacted] [She] stated [the applicant] came in around 1986 when Thelma was starting a maid service. Said niece left around 1987 to N. Texas." In view of the contents of the transcript, the applicant's explanation on appeal regarding her aunt's alleged misstatement to the Service officer must be deemed less than convincing. At the same time, given the sketchy and insufficient information provided in the transcript note, it does not appear possible to render a definitive conclusion to the effect that the applicant's entry into the U.S. did not

occur until 1986. Moreover, as the telephonic verification call to [redacted] did not take place until more than twelve years afte[redacted] completed her affidavit, any absence of recall on the part of the affiant under the circumstances would certainly be understandable.

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. In this case, the applicant has submitted no contemporaneous documentation whatever to establish her presence in the U.S. from the time she claimed to have commenced residing in the U.S. through May 4, 1988. In light of the fact that the applicant claims to have continuously resided in the U.S. since October 1981, this inability to produce contemporaneous documentation of residence raises questions regarding the credibility of the claim.

Of the nearly 11 affidavits and third party statements provided by the applicant in support of her claim, only three attest to her residence in the U.S. *prior to* 1985. Of these three declarations, two are from family members – in this case, the applicant's mother and her aunt. Such close relatives must be viewed as having an obvious interest in the outcome of proceedings, as opposed to independent and disinterested third parties. The applicant provided no explanation as to why she was unable to provide more affidavits from individuals with presumably greater objectivity, such as work associates, neighbors, friends or acquaintances.

In addition, many of the affidavits submitted by the applicant in support of the application are lacking basic and necessary information or details and, as such, fall far short of containing what such a document should include in order to render it probative for the purpose of establishing an applicant's continuous unlawful residence during the period in question. For instance, the aforementioned letter fro[redacted] of the Church of Jesus Christ of Latter-Day Saints indicates the applicant has been an active member of that congregation for the past six years. However, a[redacted]s letter is undated, it cannot be determined with any degree of specificity -- for purposes of determining the applicant's continuous residence -- exactly what *year* the applicant actually joined that organization. Other affidavits, such as that from [redacted] provide little or no information regarding the *basis* for the affiants' acquaintance with the applicant or how they came to be aware of the applicant's residence in the U.S. during the period in question.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center [or other office] does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States,* 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis). While not mentioned the district director's decision, further examination of the record discloses a signed statement taken under oath by the applicant on May 11, 1991 at the time of her class membership interview. In her statement, the applicant indicated that she first came to the U.S. in 1981 [the applicant's documentation in the record indicates that she entered the U.S. in *October 1981*]. She specified that, after residing in the U.S. for seven months, she thereupon departed to Mexico for two months. After having returned to the U.S. in 1982, where she remained for five months, the applicant again departed for Mexico, where she remained until 1984 in order to complete a year of school.

In the absence of other information, it is determined that the applicant's admitted two-month absence from the U.S. during 1982 and her subsequent departure from the U.S. from 1982 to 1984 in order to complete her education far exceeded the 45-day period allowable for single absences from the U.S. Nevertheless, there must also be a further determination as to whether the applicant's prolonged absence from the U.S. was due to an "emergent reason." 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." In her sworn statement of May

11, 1991, the applicant indicted that her 1982-1984 absence from the U.S. was for the purpose of completing her education. The applicant failed to provide a reason for her previous departure to Mexico in 1982. As such, there is no indication in either instance that an emergent reason "which came suddenly into being" delayed or prevented the applicant's return to the U.S. beyond the 45-day period.

Given the applicant's having far exceeded the 45-day limit for single absences from the U.S. during the period in question, along with the applicant's reliance on affidavits which do not meet basic standards of probative value, it is concluded that she has failed to establish continuous residence in the U.S. in an unlawful status from prior to January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act.

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