

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2

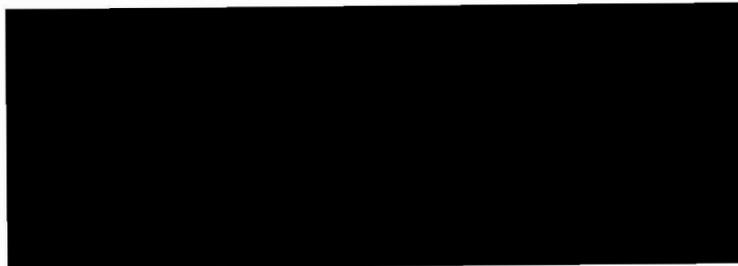


FILE: [Redacted]
MSC 01 346 60207

Office: LAS VEGAS

Date: **APR 25 2008**

IN RE: Applicant:



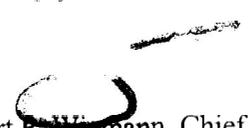
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



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. Wichmann, 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, Las Vegas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

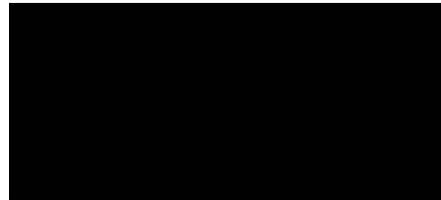
The district director denied the application because the applicant had not demonstrated that she had (1) continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988; or (2) maintained continuous physical presence in the in the United States during the period from November 6, 1986 through May 4, 1988.

On appeal, counsel states that the applicant has submitted substantial documentary evidence including letters and affidavits from friends and family. She asserts that the applicant has met her burden of proof and has established his eligibility for permanent resident status under the LIFE Act by clear and convincing evidence.

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).

On her affidavit for class membership, which she signed under penalty of perjury on April 16, 1990, the applicant claimed that she first entered the United States on November 7, 1980, when she crossed the border without inspection. On Form I-687, Application for Status as a Temporary Resident, which she also signed under penalty of perjury on April 16, 1990, she claimed to reside at the following addresses in Los Angeles, California:

November 1980 to September 1983:
September 1983 to September 1985:
April 1985 to January 1987:
February 1987 to present:



Regarding her employment history, she claimed to be self-employed as a companion from November 1980 to present.

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).

In an attempt to establish continuous unlawful residence since November 1980 and continuous physical presence in the United States from November 6, 1986 through May 4, 1988, as claimed, the applicant furnished the following evidence:

- (1) Affidavit dated June 10, 2002 by  claiming she knows the applicant because she is her friend who she met at her sister's party. She does not state the date of her first acquaintance with the applicant. In addition, she provides a history of addresses from December 1982 to December 1989, none of which match the addresses at which the applicant claimed to live during this period.

- (2) Affidavit dated June 10, 2002 by [REDACTED] claiming she knows the applicant because she is her friend and they see each other in church and at gatherings. She **does not state the date of her first acquaintance** with the applicant, and lists the same addresses for the applicant's residence as [REDACTED], none of which match the addresses at which the applicant claimed to live during this period.
- (3) Affidavit dated July 30, 2001 by [REDACTED], claiming she knows the applicant because she is her good friend/ She does not state the date of her first acquaintance with the applicant, but states that she knows she was living in the United States as of April 1985 at an address not listed by the applicant on her Form I-687.
- (4) Affidavit dated July 30, 2001 by [REDACTED] claiming she is the applicant's sister. She also lists address history for the applicant from November 1980 through December 1989, none of which match the addresses at which the applicant claimed to live during this period.
- (5) Affidavit dated July 30, 2001 by [REDACTED] z. She claims that the applicant is a good friend of her son, and that the applicant lived at [REDACTED] from April 1985 to January 1988. This claim contradicts the applicant's claim that she resided at [REDACTED] and [REDACTED] during this same period.
- (6) Affidavit dated July 30 2001 by [REDACTED], nephew of the applicant, who claims that the applicant lived at [REDACTED] from February 1988 to December 1989. This claim also contradicts the applicant's claim that she resided at [REDACTED] and [REDACTED] during this same period.
- (7) Letter dated November 20, 1999 by [REDACTED], which simply states that she has known the applicant for many years. No contact information or additional details are provided.
- (8) Letter dated November 17, 1999 by [REDACTED] M.D., claiming that he has known the applicant for a number of years. No additional information is provided. Although the letter is written on company letterhead, no contact information is provided.
- (9) Affidavit dated March 29, 2005 by [REDACTED]. She claims that the applicant called her from Los Angeles in 1980, and has seen her only one time for a visit.
- (10) Handwritten letter dated March 14, 2005 by [REDACTED], claiming that she met the applicant in 1981. She claims that several years later the applicant became her caregiver and that she has worked for her for five years.
- (11) Affidavit dated May 8, 1990 by [REDACTED] claiming that she has been friends with the applicant since she arrived in the United States. She provides a history of the applicant's prior addresses which matches those listed by the applicant on her Form I-687.
- (12) Second affidavit dated May 2, 1990 by [REDACTED] claiming that the applicant has been residing continuously in the United States since 1980. She further claims that the applicant was living with her, but provides no details.

- (13) Affidavit dated May 3, 1990 by [REDACTED] claiming that she knows the applicant has resided continuously in the United States since 1980, and claims the applicant is her good friend.
- (14) Affidavit dated May 8, 1990 by [REDACTED], claiming that the applicant has resided continuously in the United States since 1980. He claims that he has met her at the place of his relatives.

On February 3, 2006, CIS issued a Notice of Intent to Deny the application. The district director noted that despite the applicant's claim that she continually resided in the United States since November 1980, the record did not contain credible evidence to support a finding that the applicant was continually present from 1982 through 1988. The district director noted that the affidavits submitted provided only minimal evidence pertaining to the applicant's claimed residence and presence in the United States. The director afforded the applicant 30 days in which to submit additional corroborate documentation to support her claim of eligibility.

In response, the applicant submitted a letter dated February 21, 2006. The applicant claimed that she has in fact been present in the United States as claimed, but received payment by cash and did not have additional documentation. No additional documentary evidence was submitted.

The director denied the application on February 27, 2006, finding there was insufficient evidence to show that she was unlawfully present in the United States from before January 1, 1982, the beginning of the qualifying period, through May 4, 1988. Similarly, the director also noted that the applicant had failed to establish that she was continuously physically present in the United States from November 6, 1986 through May 4, 1998.

On appeal, counsel asserts that the affidavits submitted are in fact persuasive, and should be given more weight. Counsel points out that only three of the affidavits are from family members. Aside from a newly-executed affidavit by the applicant which restates her previous claims, no additional evidence is submitted.

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.

Here, the applicant has not met her burden of proof.

The record consists solely of affidavits and letters from friends and family. The applicant has submitted no corroborating evidence to support the claims in the affidavits, such as rent receipts, paystubs, utility bills, or copies of letters received in the United States.

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 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 submitted in support of this application fall far short of meeting the above criteria. For example, as discussed above, a number of the affidavits claim that the applicant lived at several addresses during the relevant period. The addresses and dates provided in the affidavits of [REDACTED] and [REDACTED], for example, list four addresses that are entirely different from those at which the applicant claimed to reside during the same period. Moreover, none of the affiants provide details with regard to the nature of their relationship with the applicant or the frequency of their contact with her. No one provides the basis for which they can attest that she entered the United States in 1980 and has continually resided therein. Finally, [REDACTED], when telephoned by CIS to verify her statements, said she had only known the applicant for five years, not twenty-five as the applicant claims. Although on appeal counsel claims that [REDACTED] had trouble hearing the officer on the telephone during that call, no additional evidence to overcome this damaging statement has been provided. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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 she continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988 or maintained continuous physical presence in the United

States From November 6, 1986 to May 4, 1988. 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.