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[REDACTED]

FILE: [REDACTED] Office: LOS ANGELES, CA Date: **JUN 25 2008**  
MSC 03 241 60270

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. If your appeal was dismissed or rejected, all documents have been forwarded to the Citizenship and Immigration Services National Records 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and you will be contacted.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the late legalization provisions of the Legal Immigration Family Equity (LIFE) Act was denied by the District Director (director), Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not established that she resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. The director also indicated that the applicant failed to provide sufficient, credible evidence that he was continuously present in the United States during the statutory period beginning on November 6, 1986 and ending on May 4, 1988.

On appeal, counsel asserted that the applicant did maintain continuous unlawful residence and physical presence in the United States during the statutory periods.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must establish his or her continuous, unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act states in relevant part:

(i) In General – The alien must establish that he or she entered the United States before January 1, 1982, and 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.

*See also* 8 C.F.R. § 245a.11(b).

The regulation at 8 C.F.R. § 245a.15(c) provides, in relevant part, that an alien shall be regarded as having resided continuously in the United States if:

(1) 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).

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 states 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 petitioner 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 petitioner 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 or petition.

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 absence of contemporaneous evidence is not necessarily fatal to the applicant’s claim of continuous residence in the United States during the statutory period. *See Id.* at 82-83. Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence. *See Id.*

The application and other statements of the applicant, both oral and written, are evidence to be considered. *See Matter of E-M-*, 20 I&N Dec. 77 at 79. The applicant’s statements must not be the applicant’s only evidence used to establish eligibility, but they should be viewed as valid evidence. *Id.*

Documentary evidence may be in the format prescribed by CIS regulations. *See Id.* at 80. For example, 8 C.F.R. § 245a.2(d)(3)(i) states that a letter from an employer should be signed by the employer under penalty of perjury and “state the employer’s willingness to come forward and give testimony if requested.” *Id.* Letters from employers that do not comply with such requirements do not have to be accorded as much weight as letters that do comply. *Id.* However, even if not in compliance with this regulation, a letter from an employer should be considered as a “relevant document” under 8 C.F.R. § 245a.2(d)(3)(iv)(L). *Id.* Also, affidavits that have been properly attested to may be given more weight than a letter or statement. *Id.* Nonetheless in determining the weight of a statement, it should be examined first to determine upon what basis it was made and whether the statement is internally consistent, plausible and credible. *Id.* What is most important is whether the statement is consistent with the other evidence in the record. *Id.*

An applicant for permanent resident status under the LIFE Act must establish that he or she is an individual who, before October 1, 2000, filed a written claim with the Attorney General for class membership in any of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993)(CSS), *League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993)(LULAC), or *Zambrano v. INS*, vacated sub nom. *Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993)(Zambrano), or that he or she was the spouse or child of such individual as of the date that individual alleges he or she was turned away or discouraged from filing an application for legalization during the original application period. *See* 8 C.F.R. § 245a.10.<sup>1</sup>

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<sup>1</sup> In the August 7, 2006 Notice of Intent to Deny (NOID), the director indicated that the availability of derivative class membership for the spouse or child of a LIFE legalization class member is set forth at 8

The AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also*, *Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO’s *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.<sup>2</sup>

At issue in this proceeding is whether the applicant has submitted sufficient evidence to meet her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The director found that the applicant has derivative status as a legalization class-action lawsuit class member based on the class membership of her husband, [REDACTED]. On May 29, 2003, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The record contains documents that relate to the applicant’s claim that she resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988, including:

1. The Form I-485 which the applicant signed under penalty of perjury on May 13, 2003. At item 3(b) of this form, the applicant stated that on January 28, 1983, July 23, 1984 and November 12, 1986 she gave birth in Mexico.
2. The Form G-325A, Biographic Information, signed by the applicant on May 13, 2003 on which the applicant stated that she married her husband, [REDACTED] on March 31, 1982 in Jalisco, Mexico. On this form, the applicant also filled in all requested information except for information relating to what year she departed Mexico.
3. The applicant’s supporting various documents which make reference to her presence or residence in the United States from 1990 to the present.
4. The Form I-485 at item 1 where the applicant indicated that her most recent entry into the United States was in 1987, and at item 3(b) where she stated that she entered the United States using a B-2, visitor’s visa.

On August 7, 2006, the director issued a NOID which stated that the evidence which the applicant submitted had failed to demonstrate continuous residence in the United States from before January 1, 1982 through May 4, 1988. In the NOID, the director also pointed out that it was not sufficient for the applicant to simply show

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C.F.R. § 245a.14. This point in the NOID is withdrawn. The availability of derivative class membership is set forth at 8 C.F.R. § 245a.10.

<sup>2</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

eligibility for derivative class membership status. She also needed to demonstrate that she had resided continuously in the United States during the statutory period, and was otherwise eligible for lawful permanent residence under the LIFE Act. For these reasons, the director intended to deny the application.

The applicant did not respond to the NOID.

On October 30, 2006, the director denied the application based on the reasons set forth in the NOID.

In the notice to deny, the director also suggested that a LIFE legalization applicant must provide documentary evidence of having been physically present in the United States from November 6, 1986 through May 4, 1988. This point is withdrawn. The regulation at 8 C.F.R. § 245a.16 indicates that an applicant may use documentation issued by a governmental or nongovernmental authority to establish continuous physical presence, but it does not require such evidence. Contemporaneous, documentary evidence is not in all cases required to establish the applicant's claim of continuous physical presence or continuous residence in the United States throughout the statutory periods. *See Matter of E-M-*, 20 I&N Dec. 77, 82-83 (Comm. 1989). Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence throughout the entire statutory period. *See Id.*

On appeal, counsel asserted that the applicant had established that she had resided continuously in the United States throughout the statutory period. Counsel also indicated that Citizenship and Immigration Services (CIS) issued a second NOID on August 19, 2006. Counsel asserted that this NOID stated in error that the applicant had been convicted of a drug related offense in 1992. Counsel stated that the applicant had never been arrested or convicted.

There is no NOID in the record dated August 19, 2006. There is also no evidence in the record that the applicant has ever been arrested or convicted. There is no reference made in the October 30, 2006 notice to deny to a second NOID dated August 19, 2006 or to the applicant ever having had any arrests. The AAO hereby states for the record that the denial of this application does in no way rely upon any finding that the applicant was ever arrested or convicted in the past, and that there is no evidence of record to support such a finding.

The applicant was married in Mexico during March 1982. She gave birth to her three sons in Mexico in 1983, 1984 and 1986, respectively. The applicant claimed on the Form I-485 that she entered the United States in 1987 as a B2, visitor for pleasure. The applicant provided no statements of her own to indicate that she made any entries into the United States prior to 1987. The applicant did not provide any supporting documents which indicate that she was in the United States prior to 1990. The director specified in the NOID that the applicant had not provided documentation to establish that she resided continuously in the United States from some date prior to January 1, 1982 through May 4, 1988. The applicant did not respond with any rebuttal to this finding. On appeal, the applicant does indicate through counsel that she had established that she resided in the United States "for the requisite period."

As noted earlier, continuous residence in the United States throughout the statutory period may be established in various ways, by contemporaneous evidence and/or by consistent, verifiable statements. Also, the application and other statements of the applicant, both oral and written, are evidence to be considered. *See Matter of E-M-*, 20 I&N Dec. 77 at 79. However, the applicant's statements must not be the applicant's only evidence used to establish eligibility. *Id.* In this instance, the applicant's only evidence of continuous

residence in the United States throughout the statutory is a statement that she made through counsel on appeal. This is not sufficient to meet the applicant's burden in these proceedings.

The applicant has failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988. Thus, the applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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