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**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED]
MSC 02 184 60988

Office: CHICAGO

Date: **MAY 30 2008**

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:



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 Legal Immigration Family Equity (LIFE) Act was denied by the District Director (director), Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director concluded that the affidavits submitted into the record were not sufficient to overcome the applicant's failure to provide "primary evidence and secondary evidence" to support her claim that she had resided continuously in the United States in an unlawful status during the statutory period, a date prior to January 1, 1982 through May 4, 1988. The director did not indicate what he found lacking in the applicant's affidavits or other evidence. The director denied the application.

On appeal, the applicant explained that it was not possible for her to obtain evidence beyond the affidavits which she had submitted. She also claimed that all the information included in her affidavits is true. The applicant indicated that she had established that she had resided continuously in the United States in an unlawful status during the statutory period.

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.¹

An applicant for permanent resident status under section 1104 of the LIFE Act 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 through May 4, 1988. *See* LIFE Act § 1104(c)(2)(B) and 8 C.F.R. § 245a.11(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 amenability to verification. 8 C.F.R. § 245a.12(e).

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 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.*

¹ 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).

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.*

Documentary evidence may be in the format prescribed by Citizenship and Immigration Services (CIS) regulations. *See Matter of E-M-*, 20 I&N Dec. 77 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.*

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-* at 79-80. 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.* at 80. 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 or 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 petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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, to deny the application or petition.

The regulation set forth at 8 C.F.R. § 103.2(b) identifies the general rule regarding under what circumstances affidavits may be accepted as probative evidence in lieu of *required evidence*. 8 C.F.R. § 103.2(b) states in relevant part:

- (2) Submitting secondary evidence and affidavits –
 - (i) **General.** The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and the relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have

direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

On or about October 24, 1995, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On April 2, 2002, she filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

On August 25, 2004, the director issued a notice of intent to deny (NOID) in which he indicated that he intended to deny the application because the applicant had not established by a preponderance of the evidence that she had resided in the United States during the statutory period. The director indicated that he had determined based on 8 C.F.R. § 103.2(b)(2)(i) that the affidavits and secondary evidence in the record relating to the applicant's continuous residence would not be accepted as probative and were not sufficient to meet her burden of proof. In the NOID, the director did not identify any discrepancies in the evidence of record.

In response to the NOID, counsel indicated that because the applicant worked for cash during the statutory period, because she worked at businesses that have since closed or which do not keep records dating as far back as the statutory period, and because she did not marry or give birth to any children during the statutory period, her only evidence of continuous residence during that period is secondary evidence and affidavits. Counsel also submitted additional evidence that the applicant had resided continuously in the United States in an unlawful status during the statutory period.

On February 9, 2005, the director issued a notice of denial of application for adjustment of status. The director indicated that the applicant had failed to establish that primary evidence of having resided in the United States was not available to her. He indicated further that based on this, he had determined that the applicant's secondary evidence, affidavits and statements in the record would not be accepted as probative evidence and were not sufficient to meet her burden of proof. The director cited 8 C.F.R. § 103.2(b)(2)(i) as his authority for the reasoning laid out in the decision, and he denied the application. The director also indicated that as of the date of the notice of denial the applicant would no longer be eligible for employment authorization in the United States.

On March 7, 2005, the Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO), in this matter was received by the District Office, Chicago, Illinois. On appeal, the applicant asserted that she did reside continuously in the United States during the statutory period. She stated that she was not able to provide additional evidence beyond what is in the record and what she included on appeal because, while in the United States, she had been involved in two different relationships which became abusive. The applicant indicated that under the threat of violence from a boyfriend or husband, she was not allowed to leave her home and work for certain periods of time during the statutory period. She was also forced to leave one home quickly to avoid violence, leaving any documentation of her residence in the United States behind. In addition, the applicant attempted to approach former employers for documentation of her employment only to learn that their businesses had folded. The applicant explained that she was including with her appeal the only additional evidence that is available to her. She also indicated that some of the evidence that she was

including did in fact relate to her even though this evidence does not list her name. She explained that, in certain instances, she had not used her real name since arriving in the United States.

The regulations provide an illustrative list of documents that an applicant may submit to establish continuous residence in the United States during the statutory period. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L). Contrary to the reasoning set out in the NOID and notice of denial, that list specifically permits the submission of secondary evidence, affidavits and any other relevant document to establish continuous unlawful residence in the United States. *See Id.* That is, in LIFE legalization proceedings, affidavits and other relevant documents are not *substitutes* for required evidence, as suggested by the director. Rather, affidavits and other relevant documents are acceptable evidence on their own, and the applicant need not first establish that other required evidence is unavailable before affidavits and other documents may be accepted as probative evidence. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L). The regulation at 8 C.F.R. § 103.2(b)(2)(i), which was relied upon by the director, is relevant only when an applicant is unable to produce *required evidence*, and instead requests that less reliable evidence be accepted as a substitute. Thus, the AAO withdraws those points in the NOID and the notice of denial where the director indicated that affidavits and other relevant documents in the record would not be accepted as probative evidence in these proceedings because the applicant had not first provided evidence to substantiate that other required or “primary” evidence of her continuous residence in the United States is not available.

Further, the regulation at 8 C.F.R. § 245a.20(a)(2) indicates that employment authorization that is issued pursuant to 8 C.F.R. § 245a.13 will be continually renewed during LIFE legalization proceedings *until a final decision has been rendered on appeal*, or until the end of the appeal period if no appeal is filed. Thus, the point in the notice of denial which indicates that the applicant’s employment authorization expired the date of that notice is also withdrawn.

In this instance, the NOID and the notice of denial did not consider affidavits and other relevant evidence in the record, as these were incorrectly deemed unacceptable evidence.

On April 22, 2008, the AAO issued a Notice of Intent to Dismiss in which this office pointed out specific discrepancies in the evidence and explained that if the applicant was not able to overcome the adverse evidence in the record relating to her claim that she had resided continuously in this country throughout the statutory period, her appeal would be dismissed.

As stated in the Notice of Intent to Dismiss, the record includes the following evidence relevant to the applicant’s claim that she resided continuously in the United States during the statutory period.

1. The Form I-687 signed by the applicant under penalty of perjury on an unspecified day in November 1992, which states at item 16 that the applicant first entered the United States on January 10, 1980, that she was outside the United States from August 20, 1984 through September 22, 1984, and that she had not exited the United States at any other time since entry. At item 35, the form also states that the applicant was outside the United States from August 20, 1984 through September 22, 1984, and that she had have not exited the United States at any other time. Yet, at item 32, the

form states that the applicant gave birth to her son _____ in Mexico on December 16, 1980 and that she gave birth to her son _____ in Mexico on November 30, 1982.

2. The affidavit of _____s dated May 13, 1992 in which _____ attested that the applicant cleaned her apartment for her three times each week from May 1980 through November 1985. The affidavit is amenable to verification in that it includes the affiant's address and telephone number.
3. A copy of a registration card issued to the applicant which indicates that she was admitted to St. Francis Hospital in Evanston, Illinois on April 23, 1980.
4. The letter of _____, Patient Representative, written on St. Francis Hospital of Evanston letterhead stationery dated May 13, 1992 in which _____ indicated that the applicant had been registered with the St. Francis Hospital Clinic since April 1980, and that in August 1989, the applicant delivered her daughter _____ Mrs. _____ did not specify whether the applicant delivered Alma at this clinic. However, a copy of _____ birth certificate is included in the record and it indicates that she was born at St. Francis Hospital, Evanston, Illinois.
5. Pay stubs generated by _____'s Restaurant in Chicago, Illinois and dated after the statutory period in 1988 and issued to _____
6. The affidavit of _____ dated November 20, 1992 in which the affiant attested to having supported the applicant financially during 1987 through September 1990 while she resided at _____, Chicago, Illinois. He attested that at that time the applicant was his girlfriend, and that she is the mother of his daughter _____. The affidavit is amenable to verification in that it includes the affiant's address.
7. The affidavit of Pastor _____ the Executive Chef at Great Godfrey Daniel's Restaurant, dated November 16, 1992 in which _____ attested that the applicant worked as a pantry girl at _____ Skokie, Illinois, from May 1985 through November 1987. He also attested that the applicant has resided continuously in the United States since that period of employment. The affidavit is amenable to verification in that the affiant included his telephone number and the address of _____
8. The affidavit of _____ and _____ of Palatine, Illinois dated October 25, 2004 in which the affiants attested that during 1980 through 2004 the applicant attended the affiants' church. The affidavit includes the affiants' address and as such appears amenable to verification.
9. The statement of _____ which is neither dated nor signed in which _____ stated that he has personal knowledge that the applicant resided in the United States

from April 1980 through the unspecified date that that document was completed. The statement includes [REDACTED]'s address, and as such it appears amenable to verification.

10. The statement of [REDACTED] which is not dated in which [REDACTED] indicated that she met the applicant in 1980. She did not state whether she met the applicant in the United States or outside the United States. The document includes [REDACTED]'s address and telephone number, and as such it appears amenable to verification.
11. The statement of [REDACTED] dated February 26, 2002 in which [REDACTED] indicated that she has known the applicant since 1980, that she prepared her income taxes for her, and that she prepared the applicant's immigration paperwork for her. [REDACTED] did not indicate whether she met the applicant in the United States or outside the United States.² The document does not appear to be amenable to verification.
12. A copy of the applicant's sister's death certificate which indicates that her sister [REDACTED] died during September 1984.

The applicant submitted the Form I-687 which states that she entered the United States during January 1980 and that she did not depart this country until August 20, 1984. She also submitted the affidavit of [REDACTED] dated May 13, 1992 in which [REDACTED] attested that the applicant cleaned her apartment for her three times each week from May 1980 through November 1985. Yet, the Form I-687 also indicates that the applicant had to have been outside this country during December 1980 and November 1982 because that form states that during those months the applicant gave birth in Mexico to her sons [REDACTED] and [REDACTED] respectively.

These discrepancies in the record cast serious doubt on the authenticity of all the evidence of record and on the applicant's claim that she resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

As stated in the Notice of Intent to Dismiss, such inconsistencies in the record may only be overcome through independent, objective evidence of the applicant's claim that she resided continuously in the United States throughout the statutory period. As contemporaneous evidence of her claim that she resided in the United States during the initial portion of the statutory period, the applicant provided only one item: a copy of a

² [REDACTED] attempted to notarize this document herself, and as such this document shall not be considered duly notarized.

registration card issued to her which indicates that she was admitted to St. Francis Hospital in Evanston, Illinois on April 23, 1980. This evidence is not sufficient to overcome other evidence in the record which suggests that during winter 1980 through winter 1982, the applicant was residing in Mexico and that she gave birth to two sons during that period.

The applicant has failed to provide contemporaneous evidence that might be considered independent, objective evidence of her having resided in the United States from a date prior to January 1, 1982 and throughout the statutory period.

This office also finds that the various statements and affidavits currently in the record which purport to substantiate the applicant's residence in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding her claim that she maintained continuous residence in the United States throughout the statutory period, and that they are not probative evidence.

In the April 22, 2008 Notice of Intent to Dismiss, this office explained to the applicant that she must provide independent and objective evidence from credible sources which thoroughly address and rebut the discrepancies described above. She was afforded 30 days (plus 3 days for mailing) from the date of that notice in which to respond. It was also explained to her that if she did not respond within the allotted period, the AAO would dismiss her appeal. More than 33 days have elapsed since that notice was issued and the applicant has not responded.

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, she 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.