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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
MSC 02 221 60368

Office: EL PASO

Date: DEC 10 2007

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. 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. 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, El Paso, 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 he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. Specifically, the director determined that the applicant had failed to submit sufficient evidence to establish his presence in the United States from January 1, 1982 through October of 1983.

On appeal, counsel states that the applicant submitted substantial documentary evidence, and asserts that the applicant has met his burden of proof and has established his eligibility for permanent resident status under the LIFE Act by a preponderance of evidence. She further alleges that the director erred by failing to consider the numerous affidavits submitted in support of the application.

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 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 the affidavit for class membership, which he signed under penalty of perjury on November 22, 1993, the applicant stated that he first arrived in the United States in September 1981, when he crossed the border without inspection. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury on November 18, 1993, the applicant claimed to live at the following addresses during the relevant period:

September 1981 to November 1981:
November 1981 to January 1984:



The AAO concurs with the director's finding that the applicant submitted sufficient evidence to establish continuous residence and physical presence in the United States subsequent to October 1983. In an attempt to establish continuous unlawful residence since before January 1982 through October 1983, the applicant furnished the following evidence:

- (1) Letter dated July 29, 2004 from a counselor (name eligible) at Montebello Community Adult School, claiming that they were unable to locate records of attendance for the applicant since their records only go back as far as 1994. The letter continues to claim that a note written by a former teacher, claiming that the applicant attended classes at the school "for the year 1981 to 1982," is legitimate.
- (2) Memorandum dated January 28, from [redacted] claiming that the applicant was in her English class from November 1981 to March 1982. No additional information is provided, and she concludes by stating that "There isn't any documentation to verify this."

- (3) Notarized letter dated July 19, 2004 from [REDACTED], claiming that he had known the applicant since 1982. Other than attesting to the applicant's character, the letter provides no additional information, such as the nature of his knowledge of the applicant or the address at which he knew the applicant during the relevant period.

On June 22, 2004, CIS issued a Notice of Intent to Deny the application. The district director noted that the record did not contain credible and verifiable evidence that the applicant entered the United States prior to 1982 and continually resided in the United States since before January 1, 1982 through October 1983. The applicant was afforded the opportunity to submit additional evidence in support of the application. In response, the applicant re-submitted the documentation listed above, alleging that these statements were sufficient to demonstrate his continuous unlawful residence in the United States during this time.

The director denied the application on May 19, 2005, noting that while the evidence in the record supported a finding that the applicant was present in the United States subsequent to October 1983, there was insufficient evidence to show that he was unlawfully present in the United States from before January 1, 1982, the beginning of the qualifying period, through October 1983. The director noted the documentation from Montebello Adult High School and the notarized statement from [REDACTED], but found that these documents, without additional corroborating evidence, were insufficient to satisfy his burden of proof in this matter.

On appeal, counsel for the applicant asserts that the applicant satisfied his burden of proof by a preponderance of the evidence, and specifically alleges that the director erred by not giving proper weight to the evidence submitted. Upon review, the AAO concurs with the director's decision.

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 quality 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 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.

The *Matter of E-- M--* decision provides guidance in assessing evidence of residence, particularly affidavits. In that case, the applicant had established eligibility by submitting (1) the original copy of his Arrival Departure Record (Form I 94), dated August 27, 1981; (2) his passport; (3) affidavits from third party individuals; and (4) an affidavit explaining why additional original documentation is unavailable.

Furthermore, the officer who interviewed that applicant recommended approval of the application, albeit, with reservations and suspicion of fraud. In this case, the interviewing officer recommended denial of the application, and there is no Form I-94 or admission stamp in a passport establishing the applicant entered the United States prior to January 1, 1982.

Although the applicant claims he entered the United States in September 1981, he likewise claims that he entered without inspection. As a result, there is no documentary evidence in the form of an arrival-departure record or stamped passport to verify the exact date of entry. The applicant provided a notarized statement from [REDACTED], who claims to have known the applicant since 1982. The applicant also provides a memorandum from [REDACTED] which counsel incorrectly refers to as an affidavit on appeal, in support of the contention that he entered the United States prior to January 1, 1982. These statements, however, fall far short of meeting the generally accepted criteria for affidavits.

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.

In this matter, the affidavit from [REDACTED] states only that he has known the applicant since 1982. He omits crucial information, such as the dates of the applicant's continuous residence to which he can personally attest; the address(es) where the applicant resided throughout the period which he has known the applicant; the basis for his acquaintance with the applicant; and the origin of the information being attested to. Furthermore, the memorandum from [REDACTED] is similarly lacking. Although the memo does list the applicant's alleged dates of attendance, there is no independent evidence, such as tuition receipts or report cards from the period, to corroborate her brief statement. Furthermore, contrary to counsel's claim on appeal, this is merely a memorandum and not a sworn statement. [REDACTED] omits critical information such as the address(es) where the applicant resided throughout the period which she has known the applicant; the basis for her acquaintance with the applicant; the means by which she may be contacted; and the origin of the information being attested to. These brief and somewhat generic statements fail to conform to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3).

Moreover, the applicant's Form I-687 lists no employment history prior to October 1984, and there are no affidavits or other documents which corroborate the applicant's claims that he resided at the claimed

addresses during the period on question. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Given the absence of contemporaneous documentation and the reliance on statements from acquaintances 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 he continuously resided in the United States in an unlawful status since before January 1, 1982 through October 1983. 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.