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U.S. Citizenship
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[REDACTED]

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FILE:

[REDACTED]

Office: LOS ANGELES

Date:

JUN 17 2008

MSC 02 246 63038

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:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits 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 remanded for further action, you will be contacted.

for 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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) 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 from before January 1, 1982, through May 4, 1988.

On appeal, the applicant asserts that he has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant provides copies of previously submitted documents in support of the appeal.

The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. Section 1104(c)(2)(B)(i) of the LIFE Act; 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).

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 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.

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided a notarized affidavit from [REDACTED] of Mira Loma, California, who indicated that the applicant resided with him at [REDACTED], Mira Loma, from January 1980 to September 1985. The affiant indicated that he had remained friends with the applicant since that time.

The applicant also submitted declarations from several affiants written in the Spanish language and accompanied by their respective English translations. The English translations indicated that the affiants based their knowledge of the applicant's arrival in the United States prior to 1982 through mutual acquaintances or by talking to family and friends in the neighborhood. It is noted that the translations are incomplete and inconsistent as the declarations also asked the approximate date each affiant met the applicant for the first time. Except for two affiants ([REDACTED] and [REDACTED]) who claimed to have known the applicant in Mexico, everyone indicated that they met the applicant subsequent to 1983.

On August 16, 2006, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted did not include enough details or specifics that were relevant or credible. The director determined that the affidavits lacked probative value and credibility.

The applicant, in response, provided:

- A notarized affidavit from [REDACTED] of Placentia, California, who indicated that he first met the applicant in September 1981 while working in the strawberry fields together in Placentia. The affiant asserted that he has remained friends with the applicant since that time.
- Notarized affidavits from [REDACTED] and [REDACTED] of Santa Ana, California, who indicated that they heard from family members of the applicant's arrival in the United States and that the applicant often cleaned their yard and garden from 1981 to 1983. Mrs. [REDACTED] indicated that the applicant attended her wedding in 1981.

The director determined that the affidavits submitted did not overcome the discrepancies or rebut any adverse information set forth in the Notice of Intent to Deny. The director also noted that the Form I-130, Petition for Alien Relative, filed on behalf of the applicant indicated that the applicant first entered the United States in 1992.

On appeal, the applicant asserts that the documents submitted in response to the Notice of Intent to Deny are credible and sufficient to establish his claimed residence during the requisite period. Regarding the Form I-130, the applicant, asserts, in pertinent part:

In her attempt to give her siblings a chance to become legal aliens, my sister submitted alien relative petitions on behalf of three other siblings and myself. She did this out of her own good will, even providing all the information to the person that filled the forms and paying all applicable fees. I did not file this petition, therefore, I have no knowledge what was included in the petition.

The applicant asserts that he does not know if his sister or the person that filled out the form committed a mistake and that he is unable to clarify the information from his sister as she passed away in 2003.

The applicant's statement regarding the Form I-130 filed on his behalf has been considered and is plausible as item 14 requests information regarding the beneficiary's "last" arrival in the United States.

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, *supra*. In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988. Specifically:

- attested to the applicant's employment in the strawberry fields in 1981; however, the applicant did not claim any agricultural employment on his Form I-687 application. The affiant claimed to have known the applicant since 1981, but failed to state the applicant's place of residence during the requisite period.
- indicated that the applicant cleaned their yard and garden from 1981 to 1983; however, the applicant did not claim this employment on his Form I-687 application. Further, the affiants failed to state the applicant's place of residence, provide any details regarding the nature of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence.
- The declarations submitted with the LIFE application lack probative value and evidentiary weight as the affiants' attestations to the applicant's residence in the United States prior to 1982 were based on "talking with family and friends" from the neighborhood and not of their own personal knowledge.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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).

The evaluation of the applicant's claim is a factor on both the quality and quantity of the evidence provided. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the affidavits submitted by the applicant are lacking in probative value and evidentiary weight and, therefore, the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously from before January 1, 1982, through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, 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.