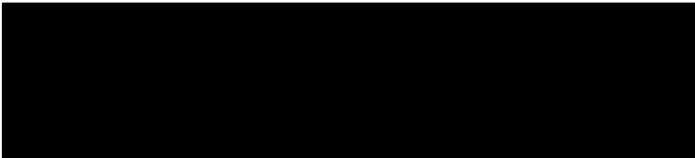




U.S. Citizenship
and Immigration
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invasion of personal privacy

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FILE: [REDACTED]
MSC 02 156 61607

Office: LOS ANGELES

Date: MAR 23 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: Self-represented

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. Any further inquiry must be made to that office.

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 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 provides copies of previously submitted documents in support of the appeal. The applicant asserted that he would be sending a brief and/or evidence within 30 days. However, more than two years later, no additional correspondence has been presented by the applicant.

An applicant for permanent resident status 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 and through May 4, 1988. 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).

Here, the submitted evidence is not relevant, probative, and credible. In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence throughout the application process:

- A letter dated June 25, 1990 from [REDACTED] of [REDACTED] in South El Monte, California, who indicated that the applicant has been employed with the company since February 26, 1986.
- Affidavits notarized June 19, 1990 and February 8, 2002 from an aunt, [REDACTED] of El Monte, California, who indicated that she has supported the applicant since September 1981 and provided him room and board until December 1986.
- An affidavit notarized February 16, 2002 from [REDACTED] of Ontario, California, who indicated that he met the applicant in December 1981 and have remained good friends with the applicant since that time.
- An affidavit notarized February 8, 2002 from [REDACTED] of South El Monte, CA, who indicated that he met the applicant in November 1981 and have remained good friends with the applicant since that time.
- An affidavit notarized February 14, 2002 from [REDACTED] of El Monte, California, who indicated that he has known the applicant since March 1981 and attested to the applicant's residence at [REDACTED] in November 1981. The affiant asserted that he has remained good friends with the applicant since that time.
- An affidavit notarized February 8, 2002 from [REDACTED] of El Monte, California, who indicated that she has known the applicant since 1980 and attested to the applicant's residence in the United States since November 1981. The affiant asserted that she has remained good friends with the applicant since that time.

While the regulation at 8 C.F.R. § 245a.2(d)(3) sets forth specific criteria which affidavits of residence from employers and organizations should meet to be given substantial evidentiary weight, we look to *Matter of E-- M--*, *supra*, for guidance in determining the appropriate criteria for affidavits from other third party individuals.

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 or she 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. Except for [REDACTED], the remaining affiants all claimed to have known the applicant residing in the United States since 1981, but provided no address for the applicant during the period in question.

[REDACTED] attested to the applicant's employment since February 26, 1986; however, the applicant claimed on his Form I-687 application employment with [REDACTED] commenced in January 1987. This discrepancy raises serious questions regarding the authenticity of [REDACTED] letter.

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” *Black’s Law Dictionary* 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Based on the evidence in this case, the AAO determines that 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).

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