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

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[redacted]

FILE: [redacted] Office: DENVER Date: MAY 10 2007

MSC 02 141 68883

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, of if the matter 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, Denver, 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, counsel points out that the applicant has submitted sworn statements indicating that a fire destroyed most of the documents that could be used to prove physical presence, and asserts that the affidavits submitted by the applicant prove by a preponderance of evidence that the applicant continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

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 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).

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 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).

Here, the submitted evidence is not sufficiently 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 March 3, 2003 from [redacted] the applicant's sister and a resident of Mexico, stating that the applicant has been living in the United States since 1981 but that she cannot submit correspondence she had with him because these documents were destroyed in a house fire at their parents' house in 1998. The letter is signed by three other individuals who Ms. [redacted] claims "are aware of the facts" stated in the letter.

- A letter dated March 3, 2003 from [redacted], the applicant's brother and a resident of Mexico, stating that the applicant has been living in the United States since 1981. Mr. [redacted] states that he cannot submit additional evidence of his brother's residency because this evidence was destroyed in a fire at the "house they grew up in" in Mexico. The letter is signed by three other individuals who Mr. [redacted] claims "can verify that this happened."

- A letter dated February 21, 2003 from [redacted] the applicant's father and a resident of Mexico, stating that the applicant has been living in "different parts of the United States as Hollywood" since 1981. Mr. [redacted] states that he can offer no additional evidence of his son's residency because such evidence was destroyed in a house fire.

- An affidavit notarized on December 8, 2001 from [redacted] stating that he first met the applicant in May 1988 in Los Angeles, California when the applicant was dating his cousin.

- An affidavit notarized on December 8, 2005 from [redacted] stating she first met the applicant in 1981 when he was living at [redacted] in Los Angeles,

California and dating Ms. [redacted] niece, who was living with Ms. [redacted] at the time. Ms. [redacted] states that to her knowledge, the applicant and her niece, who is now the applicant's wife, have never left the United States.

- The applicant's student identification cards for the 1987-88 and 1988-89 school years at [redacted] Adult School.
- A receipt dated January 7, 1988 from [redacted] Decorating issued to the applicant at an address in Los Angeles, California bearing the street number 1042.
- A receipt dated November 20, 1987 issued to the applicant by "RTD".
- A check cashing identification card issued to the applicant on November 9, 1987
- Several letters bearing the applicant's name and an address of [redacted] in Los Angeles, California and postmarked in the years 1987 and 1988.

On April 26, 2004, the director issued a Notice of Intent to Deny (NOID) stating that the affidavits submitted by the applicant were "not convincing proof of [the applicant's] continuous residence during the required periods." The director listed examples of the types of documentation the applicant could submit to prove continuous residency and indicated that the application would be denied if the applicant failed to submit additional evidence.

In a decision to deny the application dated December 27, 2004, the director indicated that the applicant had failed to submit any additional information to establish his eligibility and denied the application on the grounds stated in the NOID.

On appeal, counsel points out that the applicant has submitted sworn statements indicating that a fire destroyed most of the documents that could be used to prove physical presence, and asserts that the affidavits submitted by the applicant prove by a preponderance of evidence that the applicant continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

Upon review of all the evidence in the record, the AAO determines that the submitted evidence is not sufficiently relevant, probative, and credible to meet the applicant's burden of proof.

The applicant has submitted affidavits indicating that a fire destroyed a family home in Mexico, but this does not relieve the applicant of his burden of proving his residency in the United States. The applicant has failed to offer a reasonable explanation as to why, if he has resided in the United States since 1981, a fire in Mexico prevents him from submitting additional evidence of this residency. The affidavits from the applicant's relatives in Mexico indicate only that correspondence from the applicant was destroyed in the fire. These affidavits lack probative value in demonstrating that the applicant resided in the United States.

The only evidence of probative value showing that the applicant resided in the United States prior to 1987 is the affidavit from [redacted] Ms. [redacted] states that the applicant was dating her niece and that to her knowledge the applicant never left the United States. The applicant, however, indicates on his Form I-687, Application for Status as a Temporary Resident, that he left the United States in 1987 to visit family. Ms. [redacted] fails to provide sufficient detail to demonstrate that she had personal knowledge of the applicant's continuous residency throughout the qualifying period.

Furthermore, two of the envelopes addressed to the applicant at [redacted] are postmarked in 1987, but the applicant indicates on his Form I-687 that he did not begin residing at that address until June 1988.

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 applicant has failed to submit credible evidence that resolves the inconsistencies noted herein, or that is otherwise sufficient to meet his burden of proof.

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).

Given the insufficiency and discrepancies in the evidence, 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 since that time 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.