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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, D.C. 20529

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: LOS ANGELES Date: APR 09 2008

MSC 02 247 60416

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. 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, counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel submits additional evidence along with copies of previously submitted documents in support of the appeal.

Section 1104(c)(2)(B) of the LIFE Act states:

> (i) In General – 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. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act that were most recently in effect before the date of the enactment of this Act shall apply.

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 the following evidence:

- Notarized affidavits from acquaintances, [redacted] and [redacted], who attested to the applicant's residence in Azusa, California since October 1981 and December 1981, respectively.
- An unsigned affidavit from [redacted] indicating the applicant resided with him from November 1981 to January 1990
- A notarized affidavit from [redacted] of El Monte, California, who attested to the applicant's residence in Azusa, California since January 1982. The affiant asserted that he was a co-worker of the applicant.
- A pay stub for the period ending February 13, 1987, and a letter dated May 3, 1986, from [redacted], lot manager of [redacted], who indicated that the applicant has been employed since December 1981.

The director issued a Notice of Intent to Deny dated February 27, 2006, which advised the applicant that the documents submitted, did not establish his entry into the United States prior to January 1, 1982, and that he had continuously resided since that date through May 4, 1988.

The director, in denying the application, noted that the applicant failed to respond to the Notice of Intent to Deny. However, the record reflects that a response was received prior to the issuance of the director's decision. As such, the applicant's response, will be considered on appeal. In response, the applicant asserted that he has been in the United States since September 1981, and "have enclosed as much [evidence] as I could possibly have." The applicant asserted that he tried to obtain additional evidence of his employment at [redacted], but the company is no longer in business. The applicant submitted copies of documents that were previously submitted along with a letter dated March 20, 2006, from [redacted] president of SCLM Company, Inc. in La Verne, California, who indicated that the applicant was employed from December 1986 to February 1989. The applicant also submitted several receipts from Pep Boys, a courtesy card from Snow Summit and an unsigned statement in the Spanish language without the English translation as required under 8 C.F.R. 103.2(b)(3).

On appeal, counsel submits:

- A notarized affidavit from [redacted] of La Puente, California, who indicated to have personally known with the applicant since 1982. The affiant asserted that he met the applicant at a family reunion and has remained friends since that time.
- An additional affidavit from [redacted] who indicated she has known the applicant since October 1981 and is a life-long friend. The affiant asserted that the applicant visited her parents'

home in Wilmington, California every week to assist her father in household chores, washing the car and mowing the lawn.

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 of counsel and 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 continuously resided in the United States since before January 1, 1982 to June 1983 as he has presented contradictory and inconsistent documents, which undermines his credibility. Specifically:

1. [redacted] attested to the applicant's employment at M.A. Auto Jerez since December 1981, and [redacted] attested to the applicant's employment at SCLM Company, Inc. from December 1986 to February 1989. However, the applicant did not claim either employment on his Form I-687 application.
2. On his Form G-325A, Biographic Information signed May 24, 2002, the applicant indicated that he was employed by M.A. Auto Jerez from December 1981 to May 1986, and at Fed Ord Inc. from May 1986 to March 1988. The applicant, however, did not claim employment at either entity on his Form I-687 application. It must be noted that the record contains a letter from a representative of Federal Ordnance Inc., who attested to the applicant's employment commencing October 11, 1989.
3. The Pep Boy receipts and courtesy card from Snow Summit have no probative value or evidentiary weight as the applicant's name is not listed.
4. The affidavit from [redacted] indicating the applicant resided with him during the requisite period has no probative value or evidentiary weight as it was not signed by the affiant. It must be noted that this "unsigned affidavit" was notarized.

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).

Given the credibility issues arising from the documentation provided by the applicant, it is determined 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). 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.