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U.S. Department of Homeland Security
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Washington, D.C. 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: MAR 21 2008

MSC 02 227 61196

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. Any further inquiry must be made to that office.

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 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, and had not demonstrated that he had continuous physical presence in the United States from November 6, 1986, through May 4, 1988. The director also denied the application because the applicant has failed to establish he entered the United States before January 1, 1982.

On appeal, counsel asserts that the director misapplied the law established by *Matter of E-M-*, 20 I&N Dec. 77, (Comm.1989) when it required a Form I-94 to document the applicant's entry. Counsel argues that the director did not consider the affiants' affidavits.

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. at 79-80. 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).

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

An affidavit notarized May 9, 2005, from [redacted] of Reseda, California, who indicated she met the applicant during the period of his employment at [redacted] in February 1981. The affiant asserted she was a customer of [redacted] and the applicant would deliver her orders to her residence. The affiant asserted that in 1984, she invited the applicant to her home to have meals and socialize with her family. The affiant asserted that the applicant has remained in frequent contact with her since t

- An affidavit notarized May 9, 2005, from [redacted] of North Hills, California, who indicated he met the applicant during the period of his employment at [redacted] in February 1981. The affiant asserted that the applicant would either telephone him to sell videos or deliver his orders to his residence. The affiant asserted that in 1983, he invited the applicant to his home to have meals with his family and the applicant became a frequent visitor to his home.

In her Notice of Intent to Deny issued on November 9, 2005, the director informed the applicant that the documents submitted did not establish he had continuously resided in the United States since before January 1, 1982 through May 4, 1988, and had continuous physical presence in the United States since November 6, 1986 through May 4, 1988. The director cited *Matter of E-- M--*, and informed the applicant that he had submitted neither a Form I-94 nor equivalent documentation to establish his initial entry occurred before January 1, 1982.

The director, in denying the application on December 28, 2005, noted that the applicant failed to submit a response to the Notice of Intent to Deny. It is noted that the record reflects documentation dated December 8, 2005, submitted by counsel. However, as the documentation does not contain a received stamp, it cannot be determined if the response was received prior to the issuance of the director's decision. Nevertheless counsel's response will be considered on appeal.

In response, counsel asserted that the director's interpretation of *Matter of E-- M--*, was incorrect as the decision did not bar the use of affidavits to establish initial entrance. Counsel, in citing 8 C.F.R. § 245a.2(d)(3)(i) through(vi)), outlined the list of documents that may be submitted to establish proof of continuing residence. Counsel asserted that the documents listed are illustrative and not mandatory. Counsel submitted additional copies of [redacted]s and [redacted] affidavits along with an affidavit notarized December 2, 2005, from [redacted] of Fontana, California. [redacted] indicated he met the applicant in February 1981 while he was a manager of [redacted] in Los Angeles, California. The affiant indicated that the applicant was in his employ on a part-time basis on the weekends from November 1981 to March 1985 at [redacted]. The affiant indicated that prior to his employment and from April 1985 to 1997, the applicant was a customer of the business.

On appeal, counsel submits the following:

Additional affidavits notarized February 27, 2006, from [redacted] and [redacted] who reaffirmed their previous affidavits.
An additional affidavit notarized February 17, 2006, from [redacted], who reaffirmed his previous affidavit.

- An affidavit notarized May 8, 2006, from [redacted], owner of [redacted], who attested to the applicant's employment on a part-time basis from November 1, 1981, to March 31, 1985. The affiant indicated the company records have been destroyed as it has been over 20 years since the applicant's employment. The affiant attested to the applicant's Los Angeles residence during this period as [redacted]
- An affidavit from the applicant, who indicated he was employed from February 1981 to June 1988 at [redacted], a mail order video business owned by [redacted] The applicant indicated that he is unable to obtain documentation establishing this employment as [redacted] went out of business in 1989, and in 1991, [redacted] moved to Mexico. The applicant asserted that he received his wages in cash and, therefore, he has no government records of his earnings to provide. The applicant also attested to his employment at [redacted] from November 1, 1981, to March 31, 1985, and indicated he received his wages in cash.

Counsel asserts that the affiants' affidavits viewed both separately and together, prove, by a preponderance of the evidence, the applicant entered the United States prior to January 1, 1982, and was physically present from November 6, 1986 through May 4, 1988.

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. In the instant case, the applicant has presented contradictory and/or inconsistent documents, which undermines his credibility. Specifically:

1. While [redacted] and [redacted] claim to have known the applicant since 1981 in the United States they provided no address for the applicant.
2. [redacted] and [redacted] indicate that the applicant was employed from November 1981 to March 31, 1985, at [redacted]; however, the applicant did not claim this employment on his Form I-687 application.
3. [redacted] provides an address that was not claimed by the applicant on his Form I-687 application. Assuming, arguendo, this was a typographical error on behalf of the affiant (listing [redacted] instead of [redacted]) the fact remains that the applicant provides no evidence such as lease agreements, utility bills or rent receipts to corroborate [redacted] affidavit.

These contradictions seriously undermine the credibility of the applicant's claim and the authenticity of affiants' affidavits. 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.