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

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FILE:

MSC 03 035 60788

Office: DETROIT

Date:

**JUL 13 2009**

IN RE:

Applicant:

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).

IN BEHALF OF APPLICANT:

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.

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Detroit Michigan, 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.

On appeal, counsel asserts that when the applicant legally entered the United States on August 31, 1984, he was returning to his unrelinquished unlawful residence.

An applicant for permanent resident status under section 1104 of the LIFE Act 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. Section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

The applicant 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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).

Eligibility exists for an alien who would otherwise be eligible for legalization and who was present in the United States in an unlawful status prior to January 1, 1982, and reentered the United States as a nonimmigrant in order to return to an unrelinquished unlawful residence. 8 C.F.R. § 245a.2(b)(9).

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).

At the time of his LIFE interview, the applicant indicated that he departed the United States on August 1, 1984, and entered with a nonimmigrant visitor (B-2) visa on August 31, 1984. The applicant also indicated that he departed the United States on November 30, 1985, and entered with a student (F-1) visa on December 29, 1985.

In this instance, the applicant submitted evidence, including contemporaneous documents, which tends to corroborate his claim of residence in the United States since December 29, 1985. 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* since before January 1, 1982 through May 4, 1988. In an attempt to establish continuous unlawful residence during this period, the applicant provided the following evidence:

- A letter dated October 5, 1990, from [REDACTED] graduate programs coordinator at Michigan State University, who indicated that in November 1984, the applicant visited the university to inquire about the Department of Agricultural Economics. The affiant indicated that the applicant made a second visit in January 1985 to submit his application for graduate school.
- An affidavit from [REDACTED] who attested to the applicant's residence in the United States since January 1985. The affiant based her knowledge on "my responsibility in the Department of Agricultural Economics is maintaining records of graduate students, and [the applicant] aside from personal knowledge has been in continuous residence in the U.S., based on our records."
- A letter dated January 4, 1991, from [REDACTED] who indicated that the applicant has been residing with his aunt at [REDACTED] Michigan and had attended church services at First Free Will Baptist Church in Comstock, Michigan in 1984 and 1985.
- Affidavits from [REDACTED] and [REDACTED], who indicated that the applicant shared living quarters with them at [REDACTED] Michigan from August 1984 to November 1985.
- Additional affidavits from [REDACTED] and [REDACTED] who attested to the applicant's residence in the United States since October 1980. [REDACTED] asserted that he visited the applicant in California and that the applicant resided with him when he was seeking graduate school admission. [REDACTED] indicated that the applicant "assisted me in various major endeavors through the years during his visits and temporary residence in Michigan."
- An affidavit from [REDACTED] who indicated that the applicant shared living quarters with her from October 1980 to August 1984 at San Diego, California.

- A letter dated November 4, 1990, from [REDACTED] of Lombard, Illinois, who indicated that she provided the applicant with money in order to purchase an airline ticket to the United States in 1980 and gave the applicant tennis rackets at Christmas 1981. The affiant attested to the applicant's residence at [REDACTED], San Diego, California during this time. The affiant indicated that she occasionally visited the applicant at Michigan State University and also the applicant spent several weekends with her while he was residing in Kalamazoo, Michigan.
- A letter dated December 4, 1990, from [REDACTED], secretary of Laguna Filipino Club of San Diego, who indicated the applicant was a member in 1981 and 1982.
- An affidavit from [REDACTED], who indicated that he has known the applicant since November 1980 and that the applicant gave tennis lessons to him and his children.

On March 29, 2005, the director issued a Notice of Intent to Deny, which advised the applicant that because he had legally entered the United States during the requisite period, he was statutorily ineligible for the benefit being sought.

Counsel, in response, asserted that the applicant was present in the United States prior to January 1, 1982, and that the applicant's entry with a nonimmigrant visa did not interrupt his continuous unlawful presence because he was returning to an unrelinquished unlawful residence.

The U.S. Citizenship and Immigration Services (USCIS) 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, USCIS 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 should be analyzed to determine 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 counsel 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 in an unlawful status since that date through May 4, 1988.

The applicant claimed on his Form I-687 application that he was self-employed from August 1981 to November 1985. However, the applicant provided no evidence such as letters from individuals with whom he had done business as required under 8 C.F.R. § 245a.2(d)(3)(i).

[REDACTED] in his letter, indicated that the applicant's application for the 1985 fall semester has been approved; however, the applicant requested that his admission be moved to the 1986 winter semester. No evidence, however, has been provided by the applicant to corroborate the

affiant's letter. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The letter from [REDACTED] has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the individual does not explain the origin of the information to which he attests.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. The affiants' statements do not provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time periods addressed in the affidavits. To be considered probative and credible, affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the affiant does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and collectively, the affiants' statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period as required under both 8 C.F.R. § 245a.12(e) and *Matter of E- M--*, *supra*. 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.