The Applicant, a native and citizen of India, seeks to adjust status to that of a lawful permanent resident (LPR) under the LIFE Act. The LIFE Act allows eligible foreign nationals who resided unlawfully in the United States during specified time periods, and who submitted membership claims in certain legalization class-action lawsuits, to become LPRs, if they are admissible to the United States, have not been convicted of a felony or three or more misdemeanors in the United States, and can demonstrate basic citizenship skills. See section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. No. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. No. 106-554, 114 Stat. 2763 (2000) (providing the requirements for adjustment of status under the LIFE Act legalization provisions).

The Director of the Los Angeles, California District Office denied the Form I-485, Application to Register Permanent Residence or Adjust Status, concluding that the record did not establish that the Applicant entered the United States before January 1, 1982, and thereafter resided continuously in an unlawful status since that date through May 4, 1988.

On appeal, the Applicant submits additional evidence and a brief asserting that he submitted sufficient evidence of his continuous residence in the United States during the requisite time period.

Upon de novo review, we will dismiss the appeal.

I. LAW

An applicant who has applied for adjustment of status to lawful permanent residence under section 1104 of the LIFE Act must establish, among other requirements, that he or she entered the United States prior to January 1, 1982, and thereafter resided continuously in the United States in an unlawful status until May 4, 1988, and was physically present in the United States from November 6, 1986, until May 4, 1988. An applicant must also be admissible to the United States as an immigrant and not convicted of a felony or three or more misdemeanors committed in the United States. Section 1104(c) of the LIFE Act; 8 C.F.R. § 245a.11.
Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(I).

The Applicant bears the burden of proving, by a preponderance of the evidence, that he resided in the United States for the requisite periods, is admissible to the United States, and is otherwise eligible for adjustment of status. 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. Id. To meet his burden of proof, the Applicant must provide evidence of eligibility apart from his own testimony, and the sufficiency of all evidence will be judged according to its probative value and credibility. 8 C.F.R. § 245a.12(f).

II. ANALYSIS

A. The Applicant Has Not Demonstrated His Entry Prior to January 1, 1982, and Continuous Residence in the United States During the Requisite Period

The Director concluded that the record did not establish that the Applicant entered the United States before January 1, 1982, and resided in a continuous unlawful status since that date through May 4, 1988. On appeal, the Applicant asserts that pursuant to U.S. Citizenship and Immigration Services (USCIS) policy guidance on the adjudication of LIFE Act adjustment cases (LIFE Act memorandum), an application cannot be denied solely on the grounds that only affidavits were submitted. However, the LIFE Act memorandum does not advise that any affidavit, or as in this case, declaration or written statement, will be accepted as probative evidence. Instead, the LIFE Act memorandum states that the weight of an affidavit depends on the totality of the circumstances, including whether the affiants have specific, personal knowledge of the applicant’s continuous residence in the United States. Thus, as the LIFE Act memorandum explains, the submission of affidavits alone will not always be sufficient to support an applicant’s claims. In this case, the Applicant has not submitted credible, detailed, and probative supporting documentation to overcome the basis for denial.

As an initial matter, the Applicant’s personal declaration and immigration filings contain inconsistent statements regarding when he first entered the United States. The Applicant first recounted in his declaration that he left India when he was 12 years old and traveled to the United States with his parents in April 1980. However, he later stated in the same declaration that he

1 The written statements the Applicant has submitted are not all affidavits, as they are not “voluntary declaration of facts written down and sworn to by a declarant . . . before an officer authorized to administer oaths.” Black’s Law Dictionary (10th Ed., West 2014) (definition of “affidavit”).
2 Memorandum from Dea Carpenter, Acting Principal Legal Advisor, HQCOU 70/10.14, Adjudication of LIFE Legalization Applications page 2 (Dec. 5, 2003), a copy of which is incorporated into the record of proceedings.
3 Id.
entered the United States without inspection when he was 11 years old. The Applicant’s responses on his Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, and his Form I-589, Application for Asylum and for Withholding of Removal (asylum application), further add to these discrepancies. First, the Applicant listed on his Form I-687 his residence in the United States as starting in July 1981, which is inconsistent with the claim he made in his declaration of entering the United States in April 1980. Then, on his asylum application, the Applicant wrote that his first entry into the United States was in June 1990 as a B-2 visitor. In his asylum declaration, the Applicant stated that he resided in India until 1986 and then moved with his family to ______ before his entry into the United States in June 1990 as a visitor. The Applicant’s inconsistent statements are significant and detract from the overall credibility of his claims.

The supporting statements from the Applicant’s family members, friends, and employer also contain inconsistent statements or are otherwise deficient in establishing his continuous residence in the United States during the requisite period. The Applicant submitted two employment verification letters from ______ —one for his employment with ______ and another one for his employment with ______. To begin with, these letters are of little probative value because they do not contain a job title with each company and his signature on each letter is remarkably different. Moreover, in the first letter he wrote that the Applicant was a part-time dishwasher at the ______ in ______ Michigan from ______ to April 1984. The Applicant, however, was only 12 years old in 1981. Aside from these issues, the letters do not conform to the requirements under 8 C.F.R. § 245a.2(d)(3)(i) for employment verification letters in legalization applications. Although the letter from ______ is on company letterhead stationary, it does not provide the Applicant’s address during his period of employment and whether the information provided was taken from company records. In ______ second letter, he wrote that the Applicant was employed with ______ as a store helper and cashier from May 1984 to July 1989. This letter is not on company letterhead stationary and does not contain the address of the company. It also does not provide the Applicant’s address during his period of employment and whether the information was taken from company records. Accordingly, these letters merit little weight as supporting evidence of the Applicant’s residence in the United States.

The letters from the Applicant’s friends and family members similarly lack credible, probative details. In his first declaration, the Applicant’s friend, ______ recounted that he has “known [the Applicant] since 1984 . . . through his relatives living in ______ MI.” However, in the same statement ______ recounted that he met the Applicant “in late 1988.” ______ does not further clarify when or provide details on how he first met the Applicant. In his second statement, ______ reiterated that he first met the Applicant in 1984, but this time he indicated that he met the

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4 Information from the Applicant’s previous legalization forms may factor into the current application as all such filings are an application for legalization under section 245A of the Act. Memorandum from Dea Carpenter, Acting Principal Legal Advisor, HQ COU 70/10.14, Adjudication of LIFE Legalization Applications at page 2.
Applicant “through his relatives living in [ blanks] CA.” [ blanks] also stated that he can affirm that the Applicant has resided in the United States since 1981. But he does not further explain how he knows of the Applicant’s residence in the United States prior to their purported first meeting in 1984.

The declarations from the Applicant’s cousins, [ blanks] and [ blanks] and his friend, [ blanks] contain similar inconsistencies regarding the Applicant’s dates of residence in the United States. [ blanks] wrote that the Applicant entered the United States in May 1981 and “moved to California after they could not find a suitable job in New York.” [ blanks] wrote in his declaration that the Applicant “[f]rom 1981 to about 1990 has lived in different States and sometimes with different relatives. First at [ blanks] in [ California], and then on CA.” [ blanks] recounted that the Applicant traveled from India to the United States in April 1981 and resided with her and her husband “at our . . . [California] address between 1981 and 1986.” However, the Applicant in his declaration recounted that he first entered the United States in April 1980 and thereafter resided in Michigan with his parents from 1980–1984. The Applicant also listed his residence in Michigan from 1981–1984 on his Form I-687. The inconsistencies in these declarations reveal that the Applicant’s friends and family members do not have specific, personal knowledge of the Applicant’s residence in the United States. Accordingly, their statements are of little probative value as supporting evidence.

On appeal, the Applicant submits an undated letter from [ blanks] who writes that he has known the Applicant since “some time 1980 when they visit to seen [ sic] my family in home in . . . I often visit him and some time he visit me at my house in home [ sic].” The letter provides no other details on personal knowledge of the Applicant’s residence in the United States during the requisite period. He also submits a form-letter affidavit from [ blanks] dated September 1990, in which she attests that to the best of her knowledge the Applicant meets the requirements for class membership. However, the Applicant’s membership in one of the legalization class-action lawsuits is not at issue in these proceedings. The issue here is the Applicant’s entry into the United States prior to January 1, 1982, and continuous residence in the United States through May 4, 1988. In this case, the Applicant has not provided sufficiently detailed, probative, and credible documentation to establish his residence in the United States during the requisite period.

B. The Applicant is Statutorily Ineligible for LIFE Act Adjustment Based on His Felony Conviction

Beyond the decision of the Director, even if the Applicant established his entry into the United States prior to January 1, 1982, and continuous unlawful residence in the United States during the requisite period, he would still be ineligible for adjustment of status based upon his criminal record.

An individual convicted of three misdemeanors, or one felony, is ineligible for adjustment of status under the LIFE Act. 8 C.F.R. § 245.18(a). The term felony generally means a crime committed in the United States, punishable by imprisonment for a term of more than one year. 8 C.F.R. § 245a.1(p). In 2014, the Applicant was convicted in the Superior Court of California.
Of felony grand theft in violation of section 487(a) of the California Penal Code (CPC). A felony grand theft offense under the CPC is punishable by a term of imprisonment in a county jail for 16 months, or two or three years. See Cal. Penal Code § 489 (West 2014) (punishment for grand theft); Cal. Penal Code § 1170(h) (West 2014) (punishment for a felony when the term is not specified). Accordingly, the Applicant’s felony conviction renders him statutorily ineligible for adjustment of status under the LIFE Act.

In addition, the Applicant is ineligible for adjustment of status under the LIFE Act based on his inadmissibility under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. See 8 C.F.R. § 245a.11(d) (an applicant for LIFE Act adjustment must establish admissibility). The Board of Immigration Appeals recently held that a theft offense is a crime involving moral turpitude if it involves a taking or exercise of control over another person’s property without consent and with the intent to deprive the owner of his or her property either permanently or under circumstances where the owner’s property rights are substantially eroded. Matter of Diaz-Lizarraga, 26 I&N Dec. 847 (BIA 2016). Under Californian law, a conviction for grand theft or petty theft requires the specific intent to deprive the victim of his or her property permanently. Castillo-Cruz v. Holder, 581 F.3d 1154, 1160 (9th Cir. 2009) (citations omitted); see also Rashtabadi v. Immigration and Naturalization Service, 23 F.3d 1562, 1568 (9th Cir. 1994) (finding that grand theft under section 487 of the CPC is a crime of moral turpitude). Accordingly, the Applicant’s grand theft conviction renders him inadmissible to the United States for having committed a crime involving moral turpitude. There is no waiver available under the LIFE Act provisions for this ground of inadmissibility. 8 C.F.R. § 245a.18(c)(2)(i).

Accordingly, the Applicant is also ineligible for LIFE Act adjustment based on his felony conviction and inadmissibility to the United States for having committed a crime involving moral turpitude.

III. CONCLUSION

The Applicant is ineligible for adjustment of status under the LIFE Act because he has not established by a preponderance of the evidence that he entered the United States prior to January 1, 1982, and thereafter resided continuously in the United States in an unlawful status until May 4, 1988. In addition, he is ineligible based on his felony conviction and inadmissibility to the United States for having committed a crime involving moral turpitude.

ORDER: The appeal is dismissed.

Cite as Matter of G-P-, 1ID # 966619 (AAO Mar. 19, 2018)