

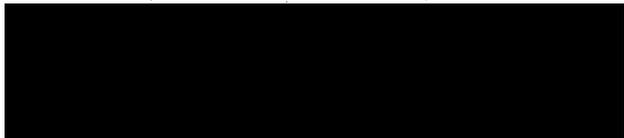
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U.S. Department of Homeland Security
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U.S. Citizenship
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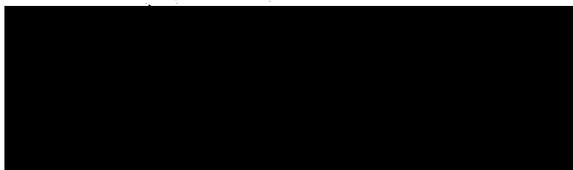
Office: Houston

Date:

IN RE: Applicant: 

PETITION: 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:



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, or 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, Director
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The district director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. This decision was based on the district director's conclusion that the applicant had exceeded the forty-five (45) day limit for a single absence during this period as set forth in 8 C.F.R. § 245a.15(c)(1)(i). The district director further concluded that the applicant had exceeded the thirty (30) day limit for a single absence in the period from November 6, 1986 to May 4, 1988, as the district director stated was set forth in 8 C.F.R. § 245a.16(b).

On appeal, counsel asserts that the applicant has provided sufficient and credible evidence to resolve any discrepancy regarding the length of his absence from the United States in June 1987. Counsel submits documentation in support of the appeal.

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).

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1), as follows: An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.

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).

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. *See Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989).

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).

It must be noted that the district director erred in applying a thirty (30) day limit for a single absence in the period from November 6, 1986 to May 4, 1988 as set forth in 8 C.F.R. § 245a.16(b). This regulation has since been amended and the previous reference to a "thirty (30) day limit" on absences has been removed. The current, amended regulation reads as follows:

For purposes of this section, an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the

United States. Also, brief, casual, and innocent absences from the United States are not limited to absences with advance parole. Brief, casual, and innocent absence(s) as used in this paragraph means temporary, occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.

As the district director applied an incorrect standard in determining that the applicant's absence interrupted his continuous residence in this country, the applicant's absence must be examined utilizing the standard set forth in 8 C.F.R. § 245a.15(c)(1), which provides a forty-five (45) day limit for a single absence from the United States, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.

The applicant is a class member in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (INA) on April 16, 1990. At part #35 of the Form I-687 application where applicants were asked to list all absences from the United States beginning from January 1, 1982, the applicant listed four absences of unspecified durations from this country when he traveled to Mexico "to visit my family" in May 1983, in September 1986, from June 1987 to August 1987, and in July 1990. It is noted that the applicant's absence in July 1990 did not occur in the requisite period from January 1, 1982 to May 4, 1988, and, therefore such absence need not be discussed further.

With the Form I-687 application, the applicant included two employment letters, two affidavits of residence, three postmarked envelopes, three paycheck stubs and 27 original receipts in support of his claim of continuous residence in the United States since prior to January 1, 1982.

Subsequently, on April 8, 2002, the applicant filed his Form I-485 LIFE Act application. In support of his claim of residence in the United States from prior to January 1, 1982, the applicant two new employment letters from the same two individuals who has previously provided the employment letters cited above. The applicant also submitted an attachment to the Form I-485 application in which he listed his absences and the duration of each respective absence during the requisite period as May 1983 for one week, September 1986 for two weeks, and June 1987 for one week.

The record shows that the applicant subsequently appeared for his interview relating to the LIFE Act application at the Houston, Texas District Office of the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) on July 18, 2003. The notes of the interviewing officer reflect that the applicant verified that he had been absent from the United States from June 1987 to August 1987, as had been listed on his original Form I-687 application. While the interviewing officer concluded that the applicant's absence could have been in excess of thirty days, the notes contain no indication that the interviewing officer directly asked the applicant to specify the length of this particular absence. Furthermore, the interviewing officer's notes reflect that the applicant did not make any statements or provide testimony during the course of his interview indicating the specific length of any his absences from this country during the requisite period.

In the notice of intent to deny issued on August 23, 2003, the district director questioned the veracity of the applicant's claimed residence in the United States. Specifically, the district director stated that the applicant had provided verbal testimony and a written statement during the course of his interview on July 18, 2003, in which he admitted that he had been absent from the United States for thirty days in May 1983, thirty days in September

1986, and more than forty-five days from June 1987 to August 1987. However, the record does not contain any written statement from the applicant relating to his absences that would tend to support the district director's findings. In addition, a review of the interviewing officer's notes reveals no evidence that the applicant provided testimony in which he specified the duration of any of his absences from the United States, much less admitted that he had been absent from this country for more than forty-five days from June 1987 to August 1987. The applicant was granted thirty days to respond to the notice.

In response, the applicant submitted a statement in which he declared that he had been absent from this country for one week in May 1983, two weeks in September 1986, and to the best of his recollection no more than three weeks from June 1987 to July 1987. The applicant asserted that the previous listing of his absences on the original Form I-687 application was incorrect. The applicant contended that any purported discrepancy relating to the length of his absences from this country that arose during his interview was the result of his minimal understanding of English and anxiety. The applicant indicated that he consulted with his mother and employer both of whom indicated that the applicant would have been terminated from his job if he had been absent for more than three weeks.

The district director concluded that the applicant had failed to overcome the reasons stated for the intended denial and, therefore, denied the LIFE Act application March 13, 2004.

On appeal, the applicant includes a letter signed by [REDACTED] who had previously provided the applicant with one of the two employment letters he had previously included with his original Form I-687 application. Mr. [REDACTED] reiterates that he had employed the applicant from January 1983 to March 17, 2004, the date the letter was executed. Mr. [REDACTED] declares that he can certify that the applicant had neither requested to take nor taken a leave of absence of more than fourteen days in the entire period he employed the applicant.

The explanation offered by the applicant in response to the notice of intent to deny relating to any purported discrepancy regarding the length of his absences from the United States is considered reasonable under these circumstances. While the applicant has indicated that his absence from this country in 1987 lasted from one week to three weeks on different occasions, the record contains no testimony, statement, or evidence to establish that this particular absence exceeded the forty-five day limit set forth in 8 C.F.R. § 245a.15(c)(1). The applicant provides a letter from his employer on appeal that corroborates his claim that none of his absences from the United States exceeded the forty-five day limit for single absences. Consequently, the applicant has overcome the basis of denial cited by the district director.

In this instance, the applicant submitted evidence, including affidavits, employment letters, and original contemporaneous documents, which tends to corroborate his claim of residence in the United States during the requisite period. The district director has not established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. As stated on *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the proof is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The documentation provided by the applicant supports by a preponderance of the evidence that the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.