

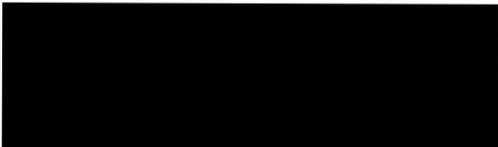
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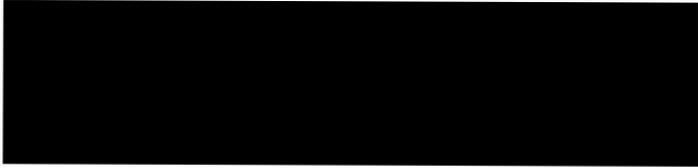
Applicant:



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).

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the late legalization provisions of the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration and action.

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. The director based this conclusion on the fact that the applicant entered the United States using a Form I-186, Mexican Nonresident Alien Border Crossing Card (Border Crossing Card), in November 1981 and January 1988.<sup>1</sup>

On appeal, counsel asserts that the applicant has provided sufficient evidence to establish continuous unlawful residence in the United States during the statutory period.

The regulation at 8 C.F.R. § 245a.2(b) provides in pertinent part:

(b) Eligibility. The following categories of aliens, who are otherwise eligible to apply for legalization, may file for adjustment to temporary residence status:

. . .

(9) An alien who would be otherwise 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, such entry being documented on Service Form I-94, Arrival-Departure Record, in order to return to an unrelinquished unlawful residence.

(10) An alien described in paragraph (b)(9) of this section must receive a waiver of the excludable charge 212(a)(19) as an alien who entered the United States by fraud.

The ground of excludability at section 212(a)(19) of the Act has been replaced by the ground of inadmissibility listed at section 212(a)(6)(C)(i) of the Act, as amended.

Section 212(a)(6)(C) of the Act provides in pertinent part:

Misrepresentation. – (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other

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<sup>1</sup> In the notice of intent to deny (NOID), the director indicated that the applicant testified to having first entered the United States "about December 1981" by showing the Border Crossing Card and that he entered again in February 1988 by showing the Border Crossing Card. However, the officer notes from the February 18, 2003 LIFE interview specify that the applicant testified that he entered during *November* 1981 and *January* 1988 using the Border Crossing Card. The applicant's written statements on the Form I-687 and the Affidavit for Determination of Class Membership in *League of United Latin American Citizens v. INS* also indicate that he made an entry in *November* not December 1981 and in *January* not February 1988.

documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The regulation at 8 C.F.R. § 212.1(c)(1981)<sup>2</sup> provides in pertinent part:

Documentary requirements for nonimmigrants. – (c) *Mexican nationals*. A visa and a passport are not required of a Mexican national who is in possession of a border crossing card on Form I-186 and is applying for admission as a temporary visitor for business or pleasure from contiguous territory . . . .

The regulation at 8 C.F.R. § 235.1(f)(1)(1981) provides in pertinent part:

(f) *Arrival/Departure Card, Form I-94* – (1) *Nonimmigrant applicants*. A completely executed Form I-94 endorsed to show: date and place of admission, period of admission, and nonimmigrant classification shall be issued to each nonimmigrant alien admitted to the United States, except:

- (iii) A Mexican national in possession of a valid Form I-186 who is admitted at a Mexican border port of entry as a border crosser or as a nonimmigrant visitor for a period of not more than 15 days to visit within the states of Texas, New Mexico, Arizona or California. (See paragraph (g) of this section as to when I-444 is required to be issued.)
- (iv) A Mexican national in possession of a valid Mexican passport and multiple-entry nonimmigrant visitor for pleasure or business visa, and is admitted at a Mexican border port of entry as a border crosser or as a nonimmigrant visitor for a period of not more than 15 days to visit within the States of Texas, New Mexico, Arizona, or California, except on the initial entry, when an alien under the purview of this paragraph will be issued a Form I-94. On subsequent applications for admission, if he is entering for less than 72 hours at a Mexican border port of entry and will proceed only within the 25-mile zone the applicant may be allowed to enter without the issuance of either Form I-94 or Form I-444.

(g) *Mexican Border Visitors' Permit (I-444)*. A Mexican national described in paragraph (f)(1)(iv) of this section applying for a second or subsequent admission, and the rightful holder of a valid Form I-186, who is admitted as a visitor for business or pleasure at a Mexican border port of entry for a period of more than 72 hours but not more than 15 days in the immediate border area, or to proceed beyond 25 miles into the

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<sup>2</sup> These regulations govern 1981 entries into the United States for which the Form-186, Mexican Nonresident Alien Border Crossing Card, was used as the sole entry document.

United States but within the States of Texas, New Mexico, Arizona, or California, for not more than 15 days, shall be issued Form I-444 endorsed to show date and place of admission, period of admission, nonimmigrant classification, and place of destination. A Mexican national in possession of a valid passport and visa valid for limited applications to enter the United States shall be issued a Form I-94 on the initial entry and Form I-444 or Form I-94 on each admission thereafter. The passport shall be endorsed on each admission until the number of entries allowed by the nonimmigrant visa has been exhausted.

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 through May 4, 1988. See LIFE Act § 1104(c)(2)(B) and 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. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also states 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 petitioner 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 or petitioner 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 or petition.

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).

Here, the submitted evidence is relative, probative and credible.

On October 31, 1990, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On September 12,

2001, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The applicant filed the following documents in support of his claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988:

1. The birth certificate of the applicant's daughter, born in Dallas, Texas in October 1986.
2. The notarized affidavit of dated October 8, 1990 which attests that the applicant worked as a mechanic and welder at Soto's Auto Center, Inc., 390 Southwestern, Coppell, Texas from approximately December 1981 through March 1985. The affidavit also states that the applicant lived in a trailer behind the auto center during this same time period.
3. The updated, notarized affidavit of dated February 22, 2003 which attests to the same information as that listed at #3 above.
4. The notarized affidavit of dated November 14, 1989 which attests that the applicant and his wife worked on farm in Marlin, Washington from April 1985 through October 1985. The affidavit also states that while working on this farm, the applicant used the alias and that his wife, used the alias.
5. Employment records from April through October of an unspecified year for . The affiant initialed and dated these employment records on November 14, 1989 apparently to indicate that the records relate to the applicant's work on his farm during 1985.
6. The updated, notarized affidavit of dated March 3, 2003 which attests to the same information as that listed at #4 above.
7. The notarized affidavit of dated September 28, 1990 which attests that the applicant worked as an installer, welder and fabric maker at Master Manufacturing in DeSoto, Texas from November 1985 through August 1987.
8. The photocopies of pay stubs from Master Manufacturing, Inc. from the pay periods ending March 5, 1986, March 12, 1986, March 19, 1986, March 26, 1986, April 2, 1986, April 9, 1986, April 16, 1986, April 23, 1986, May 14, 1986, May 21, 1986, May 28, 1986, June 4, 1986 and June 11, 1986. The pay stubs are for the employee .
9. The photocopies of payroll records from various dates in 1985 and 1986. These records consist of preprinted forms filled in by hand that do not specify an "Employer's Name" and are for the employee .
10. The photocopies of pay stubs for the employee from various dates in 1987 and 1988. These stubs are filled in with computer-generated data and do not specify the name of the employer.
11. The notarized affidavit of dated October 24, 1990 which indicates that the affiant supervised the applicant from September 1987 through April 1990 at Energy Conversion Systems, 1002 Sargent Road, Dallas, Texas, where the applicant

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<sup>3</sup> The applicant's documents and testimony indicate that he used the alias while working at Master Manufacturing.

worked as a welder/fabricator and as a mechanic's assistant. The affiant attached to the affidavit his business card which includes his contact information at Global Fiber Recovery, Dallas, Texas.

12. The updated, notarized affidavit of [REDACTED] dated March 27, 2003 which attests to the same information as that listed at #11 above. The affiant again listed his current contact information at Global Fiber Recovery, Dallas, Texas.
13. The notarized affidavit of [REDACTED] dated October 24, 1990 which attests that the affiant met the applicant in September 1987 while the two of them were employed by Energy Conversion Systems, Inc.
14. The notarized affidavit of [REDACTED] dated October 23, 1990 which attests that the affiant had been friends with the applicant since December 1981 and that the applicant resided at:
  - [REDACTED] Coppell, Texas from 12/1981 through 3/1985;
  - [REDACTED] Dallas, Texas from 11/1985 through 8/1987; and
  - [REDACTED] Dallas, Texas from 9/1987 through 5/1989.
15. The notarized affidavit of [REDACTED] dated October 25, 1990 which attests that the affiant met the applicant in November 1986 and that the applicant resided at:
  - [REDACTED] Dallas, Texas from 11/1986 through 8/1987; and
  - [REDACTED] Dallas, Texas from 9/1987 through 5/1989.
16. The notarized affidavit of [REDACTED] dated October 20, 1990 which attests that the affiant met the applicant through his cousin and that the applicant roomed with him from September 1987 through May 1989.<sup>4</sup>
17. The notarized affidavit of [REDACTED] dated September 27, 1990 which attests that the affiant was the applicant's neighbor and that the applicant lived at [REDACTED] Clarendon, Dallas, Texas from November 1985 through August 1987.
18. The notarized affidavit of [REDACTED] dated October 24, 1990 which attests to the applicant's continuous residence in the United States from December 1981 through the date that the affidavit
19. The notarized affidavit of [REDACTED] dated March 15, 2004 which attests that the applicant resided at the affiant's home from November 1981 through December 1981.

The applicant also submitted documents that attest to his presence in the United States outside the statutory period. This evidence is not relevant to his claim.

On March 5, 2004, the district director issued a Notice of Intent to Deny (NOID). She indicated that the applicant had entered the United States legally just prior to and during the statutory period using

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<sup>4</sup> The affiant failed to specify at what address he and the applicant lived. However, he did state that at the time he wrote the affidavit his address was [REDACTED] Dallas, Texas, and this is the address which the applicant listed as his address from September 1987 through May 1989 on the Form I-687.

the Border Crossing Card. Consequently, the director found that the applicant had not demonstrated continuous unlawful presence in the United States during the statutory period.

In response, counsel submitted the affidavit of [REDACTED] dated March 15, 2004. He also resubmitted the updated affidavit of [REDACTED] dated February 22, 2003. Counsel stated that the applicant had demonstrated eligibility under section 1104 of the LIFE Act.

On May 6, 2004, the director denied the application based on the reasons set out in the NOID.

On appeal, counsel submits a statement in which he asserts that the evidence in the record does demonstrate the applicant's continuous, unlawful presence in the United States during the statutory period. Counsel states that the applicant's entry into the United States in early 1988 did not interrupt his continuous, unlawful residence because at the time of that entry the applicant had "immigrant intent" in that he entered to return to his unrelinquished, unlawful residence in the United States.

The LIFE interview notes indicate that an assumption was made that when the applicant first entered the United States in November 1981, his Border Crossing Card allowed him a six-month period of authorized stay. Yet, printed on the applicant's Border Crossing Card issued in 1975 is a statement which indicates that the bearer of the card is granted at most a seventy-two hour period of authorized stay when the Border Crossing Card is used as the sole entry document. The regulations in place as late as 1988 confirm that the Border Crossing Card when presented as the sole entry document continued to be used for visits of no more than seventy-two hours. *See* 8 C.F.R. §§ 212.1(c) and 235.1(f)(1)(iii)(1988). To obtain a period of authorized stay longer than seventy-two hours, the bearer of the Border Crossing Card had to apply for and be granted a Form SW-434 or Form I-94 which specifically provides for a longer period of stay.<sup>5</sup> *See United States v. Van Duren*, 501 F.2d 1393, 1397 (7th Cir. 1974)(which specifies that the Form-186, Mexican Nonresident Alien Border Crossing Card, permits an authorized stay of no more than 72 hours, unless additional documentation has been procured.) However, notes from the February 18, 2003 LIFE interview, notes from the October 30, 1992 class membership interview and notes on the Affidavit for Determination of Class Membership in *League of United Latin American Citizens v. INS*, as updated by an immigration officer during the applicant's November 8, 1990 interview, all indicate that the Border Crossing Card was the sole entry document that the applicant used in 1981.

The applicant's testimony and supporting documentation indicate that it is more likely than not that he first entered the United States in November 1981 by showing the Border Crossing Card as his sole entry document. Given that his period of authorized stay expired no more than seventy-two hours after that entry, the applicant has demonstrated that he was in unlawful status in the United States on a date prior to January 1, 1982.

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<sup>5</sup> It is noted that the Form SW-434 was replaced by the Form I-444 in the early eighties. Both forms were titled the Mexican Border Visitors Permit and were issued to aliens in possession of a Border Crossing Card who had applied and been approved for a brief period of stay that exceeded seventy-two hours. The Form I-444 was eliminated in 1997 such that an alien in possession of a Border Crossing Card must apply for and obtain the Form I-94 should he desire to remain in the United States longer than seventy-two hours. *See e.g.* <http://www.uscis.gov/test/publicaffairs/backgrounds/BGround.htm> and *United States v. Van Duren*, 501 F.2d 1393 (7th Cir. 1974).

In addition, statements on the Form I-687 and the Affidavit for Determination of Class Membership in *League of United Latin American Citizens v. INS* contain information regarding the applicant's continuous residence in the United States during the statutory period that is consistent with the information found in the more than two-dozen supporting documents provided by the applicant. The applicant's previous applications are consistent with the supporting documents filed in the early nineties as well as the updated affidavits filed recently in conjunction with the LIFE application. Also, notes from the Service interviews conducted in conjunction with these earlier applications as well as notes from the February 18, 2003 LIFE interview reveal that the applicant has consistently provided testimony that coincides with the information on his applications and his supporting documents.

The applicant did indicate that he used the alias [REDACTED] while working at Master Manufacturing. Yet, the affidavit dated September 28, 1990 that attests to his employment at Master Manufacturing did not specify that he used an alias at this company. The employment records which he submitted as evidence of working for this company, however, do indicate that initially the applicant's records were under the name [REDACTED] and later under the name [REDACTED]. The applicant also presented to the Service an identification card (ID) which he had used that bears the name [REDACTED]. The ID also displays the applicant's photo; his date of birth; and his address from the mid-eighties as listed on the Form I-687. In light of the totality of the evidence, the minor omission on the affidavit is not viewed as an "inconsistency" in the documentation.

The affidavit of [REDACTED] dated March 15, 2004 which attests that the applicant resided at the affiant's home during 1981 failed to provide a *complete* address regarding where he and the applicant lived. However, the affiant did state that his address at the time that he wrote the affidavit was [REDACTED] San Antonio, Texas and that during the period that the applicant was part of his household his address was [REDACTED]. An Internet search revealed that

San Antonio, Texas is less than one mile away from [REDACTED] San Antonio, Texas. It is more likely than not that the affiant intended for the reader to infer from the way that he listed the two addresses on the affidavit that his city had not changed from the time period that he lived with the applicant, only his street address had changed, and that the two lived on [REDACTED] in San Antonio, when they were housemates. Thus, this minor omission on the affidavit also is not viewed as an "inconsistency" in the documentation.

The district director has not established: that the information on the applicant's supporting documents was inconsistent with the claims made on the present application or previous applications filed with the Service; that any inconsistencies exist *within* the claims made on the supporting documents; or that the documents contain false information. As stated in *Matter of E-M-*, 20 I&N Dec. at 80, when something is to be established by a preponderance of the evidence, the proof submitted by the applicant has to establish only that the asserted claim is probably true. That decision also states that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. *Id.* at 79. 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.

Further, the applicant's testimony and supporting documentation indicate that it is more likely than not that in January 1988 when he entered the United States using the Border Crossing Card,

subsequent to a thirty day absence, his intent was to return to his unrelinquished, unlawful residence in the United States. At 8 C.F.R. § 245a.2(b)(9), the Service specifically acknowledged the eligibility of an alien who reentered the United States as a nonimmigrant during the statutory period in order to return to an unrelinquished, unlawful residence so long as he was otherwise eligible for legalization. *See Reno v. Catholic Social Services, Inc.*, 509 U.S. 43, 51 (1993) (which explains further that this eligibility is qualified at 8 C.F.R. § 245a.2(b)(10) by obliging such an alien to obtain a waiver of a statutory provision requiring exclusion of aliens who enter the United States by fraud or willful misrepresentation.) *See also* sections 1104(a) and 1104(c) of the LIFE Act (indicating that all legalization provisions of section 245A of the Act, except as modified by section 1104(c) of the LIFE Act, shall apply to aliens who seek to adjust status under section 1104 of the LIFE Act.) Thus, the applicant did not interrupt his continuous, unlawful residence in the United States, begun in 1981, when he exited the country for thirty days and then reentered using the Border Crossing Card during January 1988 with the intent to return to his unrelinquished, unlawful residence.

Consequently, the applicant has overcome the particular basis of denial cited by the district director.

The applicant provided evidence that establishes by a preponderance of the evidence that he entered the United States before January 1, 1982 and he maintained continuous, unlawful residence status from such date prior to January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

Beyond the director's decision, the applicant is not eligible for permanent resident status under the late legalization provisions of the LIFE Act because he is inadmissible under section 212(a)(6)(C)(i) of the Act.

In January 1988, when the applicant presented his Border Crossing Card at Eagle Pass, Texas, he misrepresented himself to the Service as a nonimmigrant entering the United States for a brief visit. In fact, his intent upon returning was to continue residing unlawfully in the United States. Thus, in January 1988, the applicant procured entry into the United States by willfully misrepresenting a material fact. As such, he is inadmissible under section 212(a)(6)(C)(i) of the Act.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center or District Office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The applicant may not adjust status under section 1104 of the LIFE Act unless he obtains a waiver of this ground of inadmissibility. *See* 8 C.F.R. § 245a.2(b)(10). The applicant filed Form I-690, Application for Waiver of Grounds of Excludability (Sec. 245A or Sec. 210 of the Immigration and Nationality Act), with the Service on October 31, 1990. This matter is remanded for the waiver application to be adjudicated. The director shall then complete the adjudication of the LIFE application.

**ORDER:** The case is remanded for appropriate action and decision consistent with the findings stated above.