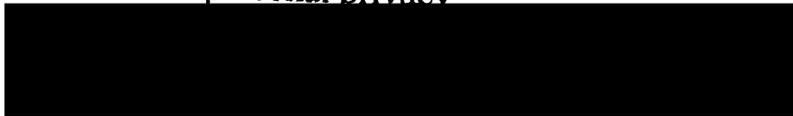




U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy



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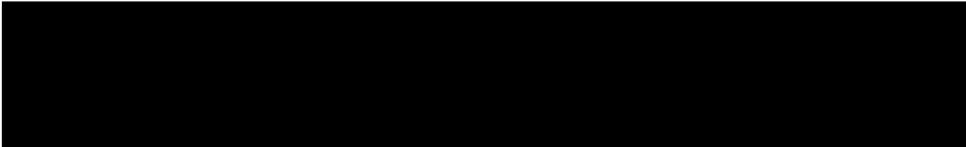
Applicant:



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. Any further inquiry must be made to that office.



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, Houston, Texas, 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 since before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the “discrepancies in verbal testimony and submitted documents” did “reflect[ed] neither a lack of credibility nor an intent to deceive, but a simple and understandable human failure of memory.” Counsel for the applicant indicated on the Form I-290B that a brief and/or additional evidence would be submitted within 30 days of filing the appeal. As of the date of this decision, however, more than 33 months after the appeal was filed, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

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. Section 1104(c)(2)(B) of the LIFE Act; 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 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 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 Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant stated on a form to determine class membership, which he signed under penalty of perjury on February 4, 1991, that he first entered the United States unlawfully in 1980. On his Form I-687, Application for Status as a Temporary Resident, the applicant that his only absences from the United

States were from November 14 to December 14, 1985, when he went to Mexico to get married; and from May 9 to May 16, 1987 when he traveled to Mexico to see his family.

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

1. A February 2, 1991 affidavit from [REDACTED] in which he stated that the applicant was his brother, and lived with him in Houston from September 1980 until May 1982, when he left to live with another brother.
2. A January 29, 1991 affidavit from [REDACTED], who stated that he was the owner of Wallcovering Services, and that the applicant had worked for him since June 1981, and that he was paid in cash for his services. [REDACTED] stated that he relied upon his "personal knowledge" in establishing the date of the applicant's employment. He did not indicate the applicant's address at the time of his employment. 8 C.F.R. § 245a.2(d)(3)(i). The applicant submitted no corroborative documentation of his employment with [REDACTED], such as pay vouchers, work schedules or similar documentary evidence of his employment.
3. A January 2, 1991 affidavit from [REDACTED] the applicant's brother, in which he stated that the applicant lived with him from May 1982 to August 1985, and then again from September 1985 through July 1987. [REDACTED] stated that the applicant lived with another brother, [REDACTED], from July 1987 to January 1989.
4. A February 6, 1991 sworn letter from [REDACTED] in which he stated that he met the applicant in 1984 when they were both involved in organized amateur soccer in Houston.
5. An envelope showing the applicant as the sender in Houston, Texas and showing a February 14, 1985 postmark.
6. A copy of a March 21, 1985 receipt for the applicant from Arion Travel International in Houston, Texas.
7. A copy of a Houston Soccer Association player's card, reflecting that the applicant was registered on January 6, 1985.
8. Envelopes with canceled U.S. postmarks dated in 1987, and showing the applicant as the sender.
9. A January 4, 1991 affidavit from the applicant's brother, [REDACTED], in which he stated that the applicant left Houston to visit family in Mexico in May 1987, and that the applicant was living with him at that time. We note that the applicant's brother [REDACTED] stated that the applicant was living with him in May 1987, and moved in with brother [REDACTED] in July of that year.
10. A September 15, 1987 pay receipt from [REDACTED], for 56 hours contract labor showing the applicant as the employee. We note that the applicant did not list [REDACTED] as an employer on his Form I-687 application. It is also unclear as to whether the applicant worked for [REDACTED] at the same time that he allegedly worked for [REDACTED].

The applicant also submitted copies of several concert ticket stubs dated in 1980, 1982 and 1983. However, these stubs do not contain a name and are not probative of the applicant's presence and residency in the United States during the qualifying period.

During his LIFE Act adjustment interview on September 16, 2003, the applicant admitted to a voluntary departure in 1983, and stated that he was given voluntary removal because he had passed the 25-mile radius of his border crossing card, which he claimed to have received in 1981. The applicant stated that he remained out of the United States for one day following his voluntary removal before again reentering illegally.

In his Notice of Intent to Deny (NOID) dated October 29, 2003, the director questioned the credibility of the applicant's claim that he obtained a border crossing card in 1981, while claiming that he had not left the United States. The director also noted that the applicant claimed to have only used the border crossing card in 1983.

On appeal, counsel asserts that the 1981 departure from the United States is irrelevant to this proceeding because the applicant had only been requested to list departures from January 1, 1982. However, the director's focus on an apparent 1981 departure from the United States is the fact that the applicant allegedly secured a border crossing card, which he could not have done in the United States. Further, if the applicant received a border crossing card in 1981, it is illogical to assume he only used it during 1983.

The only evidence of the applicant's presence in the United States prior to 1984 are the uncorroborated statements of his brothers and [REDACTED]. The applicant submitted no evidence to corroborate that his brothers resided at the addresses listed or that he resided with them. Further, as discussed above, the record contains no corroborative documentation of the applicant's employment by [REDACTED].

Accordingly, it is concluded that the applicant has failed to establish continuous residence in the U.S. for the required period.

The record reflects that, on November 30, 1998, the applicant was convicted in the Harris County (Texas) Court of the misdemeanor offense of driving while intoxicated (case number [REDACTED]). He received probation for a period of one year.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.