

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

L2

FILE:

MSC 02 197 62087

Office: LOS ANGELES

Date: JUN 15 2007

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).

ON BEHALF OF APPLICANT:

Self-represented

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, Los Angeles, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had: 1) not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988; and 2) exceeded the forty-five (45) day limit for a single absence from the United States during the requisite period.

On appeal, the applicant asserts that he has been residing in the United States since November 1979, and that he was absent from the United States in 1987 for only four weeks. The applicant states that he has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988.

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 residence” is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

*Continuous residence.* An alien shall be regarded as having resided continuously in the United States if:

- (1) 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. [Emphasis added.]

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 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).

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

- Illinois identification cards (ID) issued on February 24, 1981, and August 8, 1986. The ID cards listed the applicant's residences as [REDACTED] and [REDACTED] respectively.
- An Illinois drivers license issued on March, 21, 1987 and listed the applicant's address as [REDACTED]
- A health insurance card from Blue Shield dated February 1, 1985
- Two receipts from [REDACTED] dated March 14, 1986 and July 3, 1987.
- Earnings statements for the periods ending January 11, 1986, May 31, 1986, and May 30, 1987, from [REDACTED] Hospital in Elgin, Illinois.
- A certificate dated December 15, 1981 for the completion of a English as a Second Language program.
- An indecipherable 1981 wage and tax statement.
- A pay stub issued on June 27, 1982.
- A receipt dated June 11, 1983.
- A PS Form 3806 from the United States Postal Service postmarked July 20, 1984.
- Two pay stubs from [REDACTED], Inc. issued on April 26, 1985 and May 31, 1985.
- Two envelopes postmarked in 1985 and addressed to the applicant at [REDACTED] and [REDACTED] Illinois.
- A 1985 wage and tax statement from [REDACTED] Inc. which listed the applicant's address as [REDACTED] Illinois.
- Earnings statements from Electri-Flex Company for the periods ending August 11, 1985, and September 1 & 29, 1985
- A college transcript from [REDACTED] Community College for the 1986 fall semester.

The applicant also submitted a receipt from First National Bank of Elgin; however, as the applicant's name was not listed, it has no probative value or evidentiary weight

On August 13, 2004, the applicant was issued a Form I-72, which requested that he submit the court disposition for his 1990 arrest for driving under the influence as well as a social security printout of his earnings for 1981 to 1988. The applicant, in response, submitted printouts from the Social Security Administration, which reflected his earnings from 1991. The applicant also submitted a Form SSA-2458, Report of Confidential Social Security Benefit Information, from the Social Security Administration, which indicated that according to its records the social security numbers indicated on pay stubs, earning statements and wage and tax statements belong to someone other than the applicant. The applicant also submitted the requested court disposition, which revealed that on March 12, 1991, the applicant was

convicted of driving with .08 percent or more alcohol in the blood, a violation of section 23152(b) VC, and driving with a suspended license, a violation of section 14601.1(a) VC. Case no. [REDACTED]. These two misdemeanor convictions do not render the applicant ineligible under section 8 C.F.R. § 245a.18(a)(1).

In her Notice of Intent to Deny dated December 28, 2004, the director advised the applicant that the documents submitted did not establish continuous unlawful residence during the requisite period. The director noted that without a social security printout to verify the veracity of the pay stubs and tax forms, the documents lacked credibility. The director further advised the applicant his Form I-695 and Form I-687 applications contradicted each other, in that the applicant indicated on Form I-695 to have last entered the United States on November 24, 1979; however, he listed a departure of August 15, 1987 on his Form I-687. The director noted that this discrepancy raised questions and impacted the credibility of his claim of continuous residence in the United States. The applicant was also advised that his departure from the United States from August 15, 1987 through September 22, 1988 exceeded the 45-day limit allowed for a single absence.

The record reflects that at item 35, on his Form I-687 application the applicant listed his absence from the United States from August 15, 1987 through September 22, 1988, and that the applicant admitted in a signed statement dated April 28, 2003, to have departed the United States in August 1987 and not return until April 26, 1988; eight months later.

The applicant, in response, submitted copies of documents previously submitted along with a letter dated January 26, 1998, from the director, human resources of [REDACTED] Health Systems in Elgin Illinois, who indicated that the applicant was employed as a housekeeping aid from January 5, 1980 through January 20, 1984, and from December 16, 1985 through August 14, 1987. The applicant, asserted:

The Application for Employment Authorization it is correct that I entered United States to live continuously since November of 1979, but, it is also correct that I traveled on 08/15/87 (just visiting family) for a period of 4 weeks and re entry USA where I have been living continuously.

The statement of the applicant regarding his absence has been considered and is not consistent with the documentary evidence in the record. On appeal, the applicant provides a photocopied receipt dated February 17, 1988, for the rental of four tables and 40 chairs as evidence that he returned to the United States prior to April 26, 1988. This single document coupled with the record containing no other evidence to establish the applicant's residence or presence since his departure on August 15, 1987 through May 4, 1988, and his failure to list on his Form I-687 application, the dates of employment with [REDACTED] Hospital as well the dates at his residences are a strong indication that the applicant was outside the United States beyond the period of time allowed by regulation.

Without proof to the contrary, it is concluded that the applicant was in Mexico from August 15, 1987, and did not re-enter the United States until either April 26, 1988, or September 22, 1988, which exceeded the 45-day period allowable for a single absence. There is no evidence to indicate that an emergent reason delayed the applicant's return to the United States within the 45-day period.

Thus, the applicant's stay in Mexico during 1987 and 1988 exceeded the 45-day period allowable for a single absence, as well as the 180-day aggregate total for all absences and, therefore, interrupted his continuous residence and presence in the United States. The applicant has failed to establish that he resided in the United States in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as



required by the statute, section 1104(c)(2)(B)(i) of the LIFE Act, and the regulations, 8 C.F.R. §§ 245a.11(b) and 15(c)(1).

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