

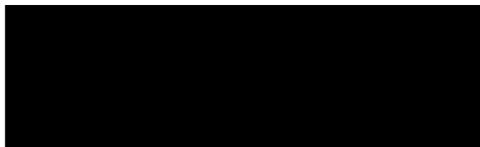
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U.S. Department of Homeland Security
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U.S. Citizenship
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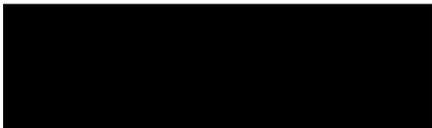
Office: HOUSTON

Date: **OCT 02 2007**

IN RE: Applicant: [Redacted]

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.

A handwritten signature in black ink, appearing to be "R. P. Wiemann".

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 on appeal. The appeal will be dismissed.

The director concluded that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. This decision was based on the director's conclusion that the applicant had exceeded the forty-five (45) day limit for a single absence, as well as the aggregate limit of one hundred and eighty (180) days for total absences, from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1).

On appeal, the applicant asserts that he misunderstood the interviewing officer and denies any absence from the United States in excess of 45 days. The applicant provides copies of previously submitted 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. Section 1104(c)(2)(B) of the LIFE Act; 8 C.F.R. § 245a.11(b).

"Continuous unlawful 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.]

The director's determination that the applicant had been absent from the United States for over 45 days was based on the applicant's own testimony in a signed statement taken at the time of his interview on March 11, 2003. The applicant declared under penalty of perjury that he departed the United States for Mexico in 1983 to visit his family and remained there for two months. The applicant stated that in 1987, he again departed the United States to visit his family in Mexico and remained for five months.

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 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).

On his Form I-687, Application for Status as a Temporary Resident, which he signed under penalty of perjury on June 26, 1991, the applicant admitted to two absences, but stated that he was out of the United States for approximately one week in May 1983 and that in 1987, he left for the purpose of visiting his sick mother in June and returned in July. On a form to determine class membership, which he signed under penalty of perjury on July 5, 1991, the applicant stated that he last departed the United States in June 1987 to visit his sick mother and returned in July 1987. In a May 17, 2002 statement attached to his Form I-485, Application to Register Permanent Resident or Adjust Status, the applicant stated that he was out of the United States for approximately fifteen days in 1983 and approximately 29 days in 1987.

On appeal, the applicant submits an affidavit in which he states that he had informed the interviewing officer that he could not remember the duration of his trips outside of the United States, but that he had already submitted a statement regarding his absences and their duration. The applicant further states:

For some inexplicable reason the Officer deducted [sic] erroneously from my responses that I was absent from the United States for [two months in 1983 and five months in 1987]. He proceed[ed] then to give me a document to sign which I did without being sure of the [content] of the document.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant submits only his statement to explain the inconsistencies in his evidence. However, his uncorroborated statement does not constitute the competent objective evidence necessary to resolve and establish the nature and duration of his absences from the United States during May 1983 and in 1987.

Additionally, the applicant has not established that his claimed prolonged absence from the United States in 1987 was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means "coming unexpectedly into being." In other words, the reason must be unexpected at the time of departure from the United States. The applicant stated during his interview that the purpose of his stay in Mexico in both 1983 and 1987 was to visit family. On his Form I-687 application, the applicant stated that his visit to Mexico in 1987 was for the purpose of visiting his sick mother. However, in neither instance did the applicant claim that his return to

the United States was delayed due to an emergent reason. In fact, on appeal, the applicant denied that either of his absences exceeded the 45-day limit.

However, as the applicant has not established by a preponderance of the evidence that his absence from the United States was for less than 45-days, we find that his admitted two-month absence in 1983 and five-month absence in 1987 interrupted his "continuous residence" in the United States. The applicant has, therefore, 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). Given this, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

Assuming, arguendo, that the applicant had established the duration of his absences, other evidence of record does not establish by a preponderance of the evidence that he resided continuously in an unlawful status from prior to January 1, 1982 through May 4, 1988.

On a form to determine class membership, which he signed under penalty of perjury on July 5, 1991, the applicant stated that he first arrived in the United States in November 1981, when he crossed the border without inspection. On his Form I-687 application, the applicant stated that, during the qualifying period, he worked for ██████████ in Cleveland, Texas from December 1981 to December 1986, doing construction and maintenance work. He further stated that he worked for Specialty Services in Huffman, Texas from June 1987 to August 1989. The applicant further stated that he lived at ██████████ in Cleveland, Texas from November 1981 to December 1986, and at ██████████ Texas from 1987 until the date of his Form I-687 application.

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 July 1, 1991 notarized statement from ██████████, in which he certified that he had known the applicant since November 1981, and that the applicant worked for him from December 1981 to December 1986. ██████████ stated that the applicant did farm work and "different kinds of odd jobs around here," and that he paid the applicant \$4.00 per hour in addition to room and board. Mr. ██████████ address was listed as ██████████
2. An August 12, 1991 affidavit from ██████████ in which he stated that the applicant is a friend and that he had known him since 1981. The affiant did not state the circumstances of his initial acquaintance with the applicant or that the applicant had resided continuously in the United States during the qualifying period.
3. An envelope addressed to the applicant at Box 1981 in Liberty, Texas with a canceled postmark of October 20, 1984. We note that the applicant stated on his Form I-687 application that he lived at ██████████ from November 1981 to December 1986. The applicant submitted no documentation to explain this inconsistency. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).
4. A copy of a March 25, 2002 sworn letter from ██████████, in which she stated that she had known the applicant since 1984, when he lived close to Lewie's Store in Liberty Texas, at which

she worked. [REDACTED] stated that the applicant came to the store every day and waited for work. This statement is inconsistent with the statements of the applicant and [REDACTED], who stated that the applicant worked for [REDACTED] in Cleveland, Texas from 1981 to 1986.

5. An August 12, 1991 affidavit from [REDACTED], in which he stated that he was a friend of the applicant and had known him since 1985. The affiant did not state the circumstances of his initial acquaintance with the applicant or that the applicant had resided continuously in the United States during the qualifying period.
6. A copy of a May 11, 2002 sworn letter from [REDACTED], in which he stated that he met the applicant in 1986 "outside of Lewie's Store in Liberty, Texas." [REDACTED] explained that the store was a location where day laborers gathered and that the applicant "has and still does work" for him on his farm. We note that [REDACTED] and the applicant stated that the applicant worked for Mr. [REDACTED] in Cleveland, Texas from 1981 to December 1986, and that on his Form I-687 application, the applicant reported no other employment until June 1987.
7. A copy of a May 10, 2002 sworn letter from [REDACTED], in which she stated that she met the applicant in 1986 when he came to live with his brother and sister-in-law, [REDACTED]. This statement is inconsistent with the statement of [REDACTED] discussed further below, in which she stated that the applicant came to live with the family in 1987. Further, as noted below, the applicant did not claim to have lived at this address during the qualifying period.
8. An August 4, 1991 sworn statement from [REDACTED] in which he stated that the applicant worked for his company, Specialty Service, from June 15, 1987 to August 10, 1989. [REDACTED] did not state whether the information regarding the applicant's employment was taken from company records and did not identify the applicant's address at the time he worked for the company, as required by 8 C.F.R. § 245a.2(d)(3)(i).
9. An August 9, 1991 sworn statement from [REDACTED] in which she declared that the applicant had lived with her and her family since 1987. [REDACTED] stated that they had resided at [REDACTED] in Liberty, Texas, and at their current address at [REDACTED] also in Liberty. [REDACTED] did not state the date that the family had lived at [REDACTED], and the applicant did not list this address as one of his residences on his Form I-687 application.
10. An envelope addressed to the applicant at [REDACTED] Texas. The postmark date on the envelope is illegible; however, one of the stamps bears an issue date of 1987. Nonetheless, the applicant did not claim to have ever lived at his address. The applicant did not submit any evidence to explain this inconsistency. *Matter of Ho*, 19 I&N Dec. at 591-92.
11. An envelope addressed to the applicant at Box 1981 in Liberty, Texas with a postmark dated April 11, 1988.

The applicant has provided inconsistent statements regarding his residency and work history during the qualifying period. Additionally, while he submitted envelopes that tend to show he was present in the United States in 1984, 1987 and 1988, addresses do not correspond with those at which the applicant stated that he lived during those periods. Accordingly, we find that the applicant's evidence does not establish by a preponderance of the evidence that he resided continuously in the United States during the qualifying period.

[REDACTED]
Page 6

Further, as discussed above, the applicant also failed to establish that his absences from the United States were less than 45 days.

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