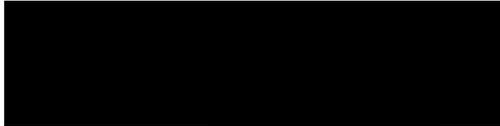


identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

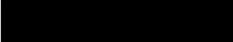


U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



L-2

FILE:   
MSC 02 241 61665

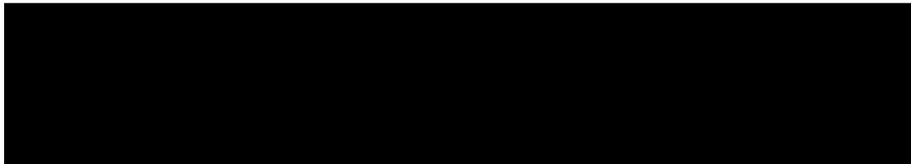
Office: CHICAGO

Date: **SEP 07 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:



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 Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he was physically present in the United States since before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant has submitted “plenty of evidence to prove his [physical] presence during the qualified [sic] period.” The applicant submits copies of previously submitted documentation in support of the appeal.

The director erred in his determination that the applicant had not established physical presence 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. Section 1104(c)(2)(B) of the LIFE Act; 8 C.F.R. § 245a.11(b). An applicant must only establish that he or she was continuously *physically present* in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(C) of the LIFE Act; 8 C.F.R. § 245a.11(c). Nonetheless, the evidence does not establish that the applicant has submitted sufficient evidence to establish continuous residency in the United States during the requisite period.

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 a form to determine class membership, which he signed under penalty of perjury on June 9, 1992, the applicant stated that he first arrived in the United States in 1980. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury on June 9, 1992, the applicant stated that he left the United States once during the qualifying period, from September 8 to October 8, 1987, and that he lived at the following addresses in Chicago, Illinois:

January 1983 to December 1984  
January 1985 to June 1986  
July 1986 to March 1991

The applicant also stated that he worked at the Midland Hotel from July 21, 1987 to the date of the application, and at Auto Union Repairs from October 1987 to July 1988. The applicant listed no other employment during the requisite period.

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 copy of a progress report for the applicant from the Chicago Public Schools for the 1980-1981 school year.
2. A copy of a June 19, 1981 certificate awarding the applicant a diploma of graduation from the eighth grade.
3. A June 17, 1981 letter from [REDACTED] notifying the applicant's parents that he would need to meet the required physical and immunization requirements for the school, and a September 9, 1981 "Notice of Exclusion from School" issued by the Chicago Public Schools, indicating that the applicant was excluded from school for failure to meet the immunization requirements.
4. A "Certificate of Award" from [REDACTED] in Chicago, Illinois for perfect attendance for the applicant for the school year 1981 to 1982. The applicant also submitted a June 25, 1982 letter from [REDACTED] to the applicant congratulating him for his attendance record.
5. A May 30, 1992 affidavit from [REDACTED] in which he declared that he had known the applicant since 1981. The affiant did not state that the applicant continuously lived in the United States for the required period.
6. A May 30, 1992 affidavit from [REDACTED] in which he affirmed that he had known the applicant since 1981. The affiant did not state that the applicant continuously lived in the United States for the required period.
7. A May 30, 1992 affidavit from [REDACTED] in which he stated that he had known the applicant since 1981. The affiant did not state that the applicant continuously lived in the United States for the required period.
8. A May 30, 1992 affidavit from [REDACTED] in which she stated that she had known the applicant since 1981. The affiant did not state that the applicant continuously lived in the United States for the required period.

9. A May 30, 1992 affidavit from [REDACTED], in which he stated that he had known the applicant since 1981. The affiant did not state that the applicant continuously lived in the United States for the required period.
10. A [REDACTED] record reflecting that the applicant entered the school on September 9, 1981, and was registered for classes from January 1982 to January 1983. The document reflects that the applicant was absent for 29 days during January 1983.
11. A July 15, 2003 letter from [REDACTED], administrator of the Lower West Side Neighborhood Health Center, in which he stated that the applicant was "brought to our health center by his family from 1981-1987" when he moved out of the area. [REDACTED] further stated that medical records were destroyed ten years after the patient's last visit, and therefore the clinic could not provide proof of the applicant's medical treatment at the facility. [REDACTED] did not explain how, without records, he was able to determine that the applicant had been treated at the facility during the time indicated.
12. A November 1982 student progress report for the applicant from [REDACTED] in Chicago.
13. A May 23, 2002 affidavit from [REDACTED], in which he stated that he was the applicant's cousin. [REDACTED] further stated that the applicant and his sister came to live with him in December 1982 when their parents returned to Mexico, and stayed with him until July 1985, when the applicant went to live with his uncle. The affiant stated that the applicant returned to his house in December 1986 and remained there until 1989. In a May 30, 1992 affidavit, [REDACTED] stated that he shared an apartment with the applicant at [REDACTED] in Chicago, that the lease was in his name but that he and the applicant shared all expenses including rent. With his 2002 affidavit, the applicant submitted a copy of a sales contract indicating that [REDACTED] and his wife purchased property at [REDACTED] on December 10, 1982. The applicant provided no explanation as to why Mr. [REDACTED] initially claimed that he and the applicant shared an apartment leased by the affiant and shared all rental expenses when other evidence indicated that he was the owner of the property in question.
14. A July 15, 2003 notarized statement from [REDACTED], pastor of Holy Cross-Immaculate Heart of Mary in Chicago. [REDACTED] certified that the applicant was a registered member of the parish from February 1983 to April 1992. [REDACTED] did not indicate the source of the information regarding the applicant's membership and does not indicate the applicant's address at the time of his membership in the parish. 8 C.F.R. § 245a.2(d)(3)(v). Additionally, in block 34 of his Form I-687 application, the applicant denied any association or affiliation with a church or other organization.
15. A September 16, 1992 affidavit from [REDACTED] who identified himself as the president of Febo Restaurant in Chicago, and stated that [REDACTED] was employed at the restaurant for six months from 1985 to 1986. [REDACTED] did not state that the [REDACTED] and the applicant were the same person; however, he signed a picture purportedly identifying the applicant as [REDACTED]. [REDACTED] also did not state whether the information he provided regarding the applicant's employment was taken from company records, nor did he state the applicant's address at the time of his employment. 8 C.F.R. § 245a.2(d)(3)(i). Additionally, the applicant did not identify Febo Restaurant as an employer on his Form I-687 application, and submitted no evidence, such as pay stubs, canceled checks, or similar documentary evidence, to verify his employment at the restaurant.

16. An April 29, 1992 affidavit from [REDACTED], who stated that she was the proprietor of Toscano Restaurant in Chicago, and that the applicant worked for the company from 1983 to January 1987. The affidavit from [REDACTED] did not state whether or not the information she provided was taken from company records, nor did she state the applicant's address at the time of his employment. *Id.* The applicant did not state on his Form I-687 that he worked for Toscano Restaurant, and submitted no documentation to corroborate his employment with the restaurant.
17. A May 30, 1992 affidavit from [REDACTED], the applicant's uncle, in which he affirmed that the applicant lived at his home from January 1985 to 1986.
18. Postcards postmarked in Chicago in July and September 1985. The cards are addressed to two individuals in Mexico and are signed [REDACTED] or [REDACTED]. The cards do not show an address for the sender in Chicago, and they indicate at best, that the applicant was present in the United States on the dates indicated.
19. An envelope showing the applicant as the sender with an address of [REDACTED], with a canceled postmark of February 6, 1986.
20. An identification card from the Midland Hotel in the name of [REDACTED], issued on February 11, 1987.
21. An April 23, 1992 letter from [REDACTED], payroll manager for The Midland Hotel, in which he certified that the hotel employed [REDACTED], also known as [REDACTED], from February 7, 1987 through September 4, 1987. The letter did not indicate that [REDACTED] or [REDACTED] was also the applicant, although the attached photo, signed by [REDACTED] is that of the applicant.
22. A June 6, 1992 sworn statement from Auto "Union" Repairs, signed by [REDACTED], who stated that the applicant was employed at the company from October 10, 1987 to July 18, 1988.
23. A 1988 Form W-2, Wage and Tax Statement, issued by the Midland Hotel Corporation to [REDACTED], a copy of a Form 1040A, U.S. Individual Income Tax Return, and a copy of a 1988 IL-1040, Illinois Individual Tax Return. The record does not indicate that either of the tax returns was filed with the appropriate tax agencies.

The applicant submitted other documentation, including identification cards and a driver's license in his name and those of his claimed aliases. However, while probative in establishing identity, these documents are dated subsequent to the requisite period and therefore are not evidence of the applicant's presence and continued residency in the United States during the qualifying period.

In a May 23, 2002 affidavit, the applicant stated that he arrived in the United States in 1980 with his parents and sister. He further stated that his parents returned to Mexico in December 1982 and that he and his sister moved in with his cousin [REDACTED] and lived with him until July 1985. The applicant stated that he then lived with his uncle, [REDACTED] at [REDACTED] before moving back with his cousin from December 1986 to 1992.

The applicant stated that he left school in January 1983 and worked at Toscano's Restaurant from that time until January 1987. He also stated that, at the same time, he worked at the Febo Restaurant from September 1985 to May 1986. The applicant did not state why he failed to mention this employment when he completed

his Form I-687 application. 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 stated that he could not provide verification of his employment with [REDACTED] and [REDACTED] other than the letters previously submitted because the restaurants were no longer in business. The regulation at 8 C.F.R. § 245a.2(d) provides that all documentation submitted must be subject to verification by CIS, and that applications submitted without verifiable documentation may be denied. Given that the applicant failed to identify these employers when he filed his Form I-687 application, unsupported statements are insufficient to meet his burden of proof.

The applicant has submitted sufficient evidence to establish his presence and residency in the United States from 1980 to December 1982, and from February 1987. The applicant submitted inconsistent evidence to establish his presence and residency in the United States from after January 1983 to January 1987. Accordingly, given the unresolved inconsistencies, the applicant has failed to establish that he resided continuously in the United States for the requisite period.

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