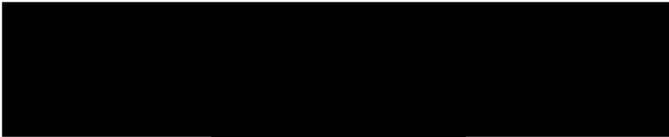


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FILE: [Redacted]
MSC 01 292 60199

Office: LOS ANGELES

Date: **APR 01 2008**

IN RE: Applicant:

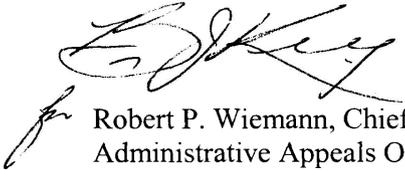


APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits [or Records] Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.


for 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 in Los Angeles, California. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the evidence submitted by the applicant, which contained conflicting information, failed to establish that he entered the United States before January 1, 1982, and resided in the United States in a continuous unlawful status through May 4, 1988.

On appeal, the applicant contends that he came to the United States in 1981 and has lived in the country continuously since then.

To be eligible for adjustment to permanent resident status under the LIFE Act an applicant must establish his or her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1) as follows: “An alien shall be regarded as having resided continuously in the United States if 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.”

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States.” The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means temporary, occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” 8 C.F.R. § 245a.16(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 its amenability to verification. See 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).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant, a native of Mexico, filed his application for permanent resident status under the LIFE Act (Form I-485) on July 19, 2001.

In a Notice of Intent to Deny (NOID), issued on August 16, 2004, the director noted some inconsistencies between the applicant’s testimony at his LIFE legalization interview on August 11, 2004, and the information he provided on the Form I-687 (application for temporary resident status) he prepared on May 16, 1990, as part of his application for class membership in the *CSS v. Meese* class action lawsuit,¹ regarding his residential addresses and employers in the United States for certain years during the 1980s. Whereas the applicant stated on the Form I-687 in 1990 that he lived in Wilmington, California, for a month after his initial arrival in the United States on December 3, 1981, before moving to Carson, California, and residing there from January 1982 until June 1988, he testified at his LIFE interview in 2004 that he lived in Santa Ana, California for nine months in 1981 before moving to Carson, and that he resided in Carson from 1982 to 1986, not 1988. The director also pointed out that the applicant stated on his Form I-687 that he found work as a painter for “South Pacific” (in December 1988), whereas he

¹ *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993).

indicated at his LIFE interview that he found a job with "Roofing Assistant Corporation" at that time. According to the director, the foregoing discrepancies cast doubt on the applicant's credibility. The applicant was granted 30 days to submit additional evidence.

In his response to the NOID the applicant acknowledged that he lived with his aunt in Santa Ana, California, when he first arrived in the United States in 1981, but stated that he did not provide this information on his Form I-687 because it only requested such information as of 1982. (In fact, the Form I-687 requested all residential addresses since first entry into the United States.) The applicant confirmed that he resided in Carson, California from 1982 to 1986, but did not indicate where he lived from 1986 to 1988. The applicant also confirmed (in accordance with the information provided on his Form I-687) that he worked for [REDACTED] (as a gardener) from 1982 to 1984 and for [REDACTED] (in construction) from 1984 to 1987, and indicated that he began his employment with "Southern Pacific Coating" in 1989. The applicant did not indicate where he worked in 1988, or explain his statement at his LIFE interview that he went to work for "Roofing Assistant Corporation" after his employment with [REDACTED]

On September 20, 2004, the director denied the application, stating that the applicant had not overcome the grounds for denial as detailed in the NOID and therefore failed to establish his continuous residence in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal the applicant acknowledges that his interview testimony was inconsistent with the information provided earlier on his Form I-687, but asserts that the documentation he has submitted supports his claim of eligibility for legalization under the LIFE Act.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish that he entered the United States before January 1, 1982, and resided in the United States continuously thereafter in an unlawful status through May 4, 1988. The AAO determines that he has not.

As evidence of his residence in the United States during the requisite years of the 1980s, the applicant has submitted a series of affidavits, all prepared on May 16, 1990, from individuals who claim to have known the applicant socially since January 1982 or employed him from January 1982 to December 1987, as well as photocopies of numerous receipts from the years 1982-1988. With respect to the photocopied receipts, many do not have the applicant's name on them and none contain date stamps or other authenticating marks from the business entity involved.

As for the affidavits in the record, one is a fill-in-the-blank format from [REDACTED] who states that the applicant rented a room at \$175/month at [REDACTED] in Carson, California, from January 1982 until June 1986, and another is from [REDACTED] who claims to have known the applicant from January 31, 1982, but does not indicate where he lived at that time or in succeeding years. Neither affidavit contains much information about the

applicant and the affiants' relationship to him over the years. Moreover, neither affidavit is supported by any documentary evidence of the affiant's own identity and presence in the United States during the 1980s. Finally, neither affidavit identified any residential address for the applicant in the United States for the time period of June 1986 to May 4, 1988.

The other two affidavits are from [REDACTED] who claims to have employed the applicant as a gardener from January 1982 to September 1984, paying him \$90/week in cash, and from Luis [REDACTED], who claims to have employed the applicant from October 1984 to December 1987, paying him \$180/week in cash, performing building, painting, and other duties associated with the construction of houses. Neither of these affidavits comports with the regulatory requirements for an employer letter set forth at 8 C.F.R. § 245a.2(d)(3)(i) because they did not identify the applicant's residential address during his time of employment and did not declare whether the information about the applicant was taken from company records, identify the location of such records, and state whether or not such records were available for review. Furthermore, the affidavits lack other indicia of credibility because neither was prepared on business letterhead, neither identified the address of the business, and neither provided any information about the business proprietor, including evidence of his identity and presence in the United States during the 1980s.

As previously indicated, evidence must be evaluated not only by its quantity, but also by its quality. Based on the foregoing analysis, the AAO determines that the photocopied receipts and affidavits in the record lack sufficient evidentiary weight to establish that the applicant resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

The appeal will be dismissed, and the application denied.

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