

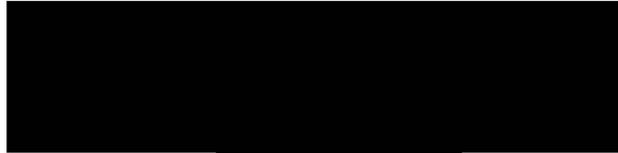
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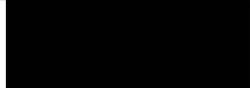
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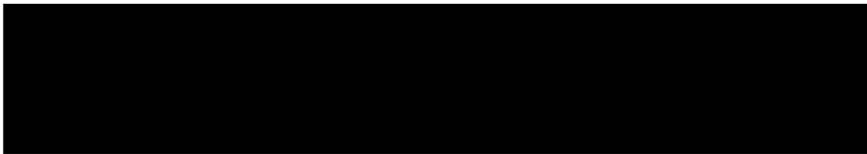
IN RE: Applicant:



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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits 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.

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 New York City. 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 applicant failed to establish that he maintained continuous residence in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel submits a brief and an affidavit from the applicant.

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.”

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 Trinidad, filed his application for permanent resident status under the LIFE Act (Form I-485) on March 14, 2002.

In a Notice of Intent to Deny (NOID), issued on March 13, 2006, the director cited the applicant's testimony at his LIFE legalization interview on March 11, 2004, that he resided in the United States unlawfully in Newark, New Jersey from September 1980 to July 1981, went to Canada in late September 1981 for one month, and then traveled to his native Trinidad, where he stayed until April 1982, before returning to the United States. The director concluded that the applicant had been absent from the United States for seven months, thereby interrupting his continuous residence in the United States during the statutory period of January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence that he fulfilled the continuous residence requirement for legalization under the LIFE Act.

In response to the NOID counsel submitted an affidavit from the applicant which amended the information he had provided at his interview. According to the applicant, he actually resided in Newark, New Jersey from June 1980 to November 1981, at which time he traveled to Canada (Toronto, Ontario) and stayed one month, before flying to Port of Spain, Trinidad, in December 1981. The applicant indicated that he planned to stay in Trinidad for two weeks, but became extremely ill and was bed-ridden with a high fever, chills, and general weakness. When he finally recuperated in March 1982, the applicant stated, he re-entered the United States, settled in New York, and has not left the country since then. Counsel asserted that the applicant's illness constituted an "emergent reason" for his failure to return to the United States within 45 days, within the meaning of 8 C.F.R. § 245a.15(c)(1), and therefore did not interrupt his continuous residence in the United States. As evidence of the applicant's illness a letter was submitted from [REDACTED], the district medical officer in Chaguanas, Trinidad, dated March 27, 2006, stating as follows:

Records at this office shows (sic) that the [applicant] was a bonafide patient between 16 December 1981 to 12 March 1982 for minor ailments.

On April 13, 2006, the director denied the application, stating that the information and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial. The director pointed out that the applicant had made no mention of any illness at his interview for LIFE legalization, and indicated that the letter from [REDACTED] did not establish that the applicant's return to the United States could not have been accomplished within the 45-day period allowed in the regulations due to emergent reasons.

On appeal counsel asserts that the director miscalculated the applicant's period of absence from the United States for LIFE Act purposes because the requisite starting date is January 1, 1982 for continuous residence in the country. Counsel also contends that the director's denial decision was arbitrary because it did not indicate what constitutes an "emergent reason" under 8 C.F.R. § 245a.15(c)(1). In counsel's view, the applicant's illness, as confirmed by the letter from Dr. [REDACTED] constitutes an "emergent reason" as contemplated in the regulation.

With respect to the applicant's period of absence from the United States, the AAO notes that even if January 1, 1982 is used as the starting date for any calculation, the applicant was clearly absent from the United States for more than 45 days because the letter from [REDACTED] confirms that he was still in Trinidad on March 12, 1982. An absence of such duration interrupts an alien's continuous residence in the United States unless (s)he can show that a timely return to the United States could not be accomplished due to emergent reasons. While counsel correctly points out that the term "emergent reasons" is not defined in the regulations, there is some pertinent case law. In *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), the Board of Immigration Appeals held that *emergent* means "coming unexpectedly into being." An illness as described by the applicant is one that could reasonably be seen as "coming unexpectedly into being." In this case, however, the AAO agrees with the director that the applicant's failure to mention any illness in Trinidad during his interview for LIFE legalization in March 2004 was a serious omission, and casts doubt on the credibility of his claim, in response to the NOID two years later, to have been ill for three months. It is noteworthy that the applicant has not submitted copies of any medical records from 1981 and 1982, but has relied exclusively on the one-sentence letter from Dr. [REDACTED] in March 2006, nearly a quarter century later. Moreover, the letter from [REDACTED], who does not appear to have treated the applicant personally, does not confirm the seriousness of the applicant's illness. It states merely that the applicant was treated "for minor ailments," which does not conform with the applicant's description of being bed-ridden for weeks.

Thus, the applicant has offered inconsistent information about the dates and duration of his absence from the United States in late 1981 and early 1982, and the reason for his belated return to the United States. He has also presented weak and unpersuasive evidence with regard to the illness he claims to have suffered, in particular whether it was serious enough to keep him in Trinidad all winter. Based on the evidence of record, the AAO concludes that the applicant has failed to establish that emergent reasons, within the meaning of 8 C.F.R. § 245a.15(c)(1), prevented his return to the United States from Trinidad within the 45-day period allowed in the regulation.

The AAO concurs with the director's decision, therefore, that the applicant has failed to establish that he 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.

It is also noted that a report in the record from the Federal Bureau of Investigation (FBI) indicates that the applicant was arrested by the County Police in Mineola, New York, on June 10, 2001, and charged with two violations of the New York Penal Code:

- (1) section 120.05 - assault in the 2nd degree, a class D violent felony; and
- (2) section 265.01 – possession of a dangerous weapon, a class A misdemeanor.

In any future proceedings before U.S. Citizenship and Immigration Services (CIS), the applicant must present evidence of the final court disposition(s) of these charges.

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