

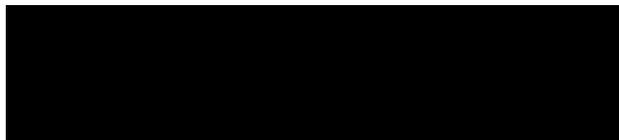
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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 02 250 62354

Office: ATLANTA

APR 22 2008

IN RE: Applicant:



APPLICATION:

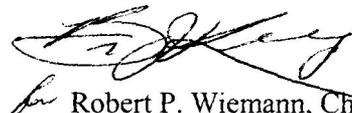
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



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.

  
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 (director) in Atlanta, Georgia. 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 resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, the applicant submits some additional documentation and asserts that the record establishes his continuous unlawful residence for the requisite time period.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their 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).

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 legal permanent resident status under the LIFE Act (Form I-485) on June 7, 2002. At his interview on March 19, 2003, the applicant was advised to submit additional evidence of his continuous residence in the United States. In response the applicant submitted photocopies of (1) a previously prepared affidavit from [REDACTED] of Merced, California, dated May 22, 2002, who claimed that the applicant resided in his home and worked for him on a cash basis from March 1982 to March 1985, and (2) earnings statements issued to the applicant by [REDACTED] in Carlsbad, California, in September and November 1987, and by [REDACTED] in Carlsbad, California, in May 1988.

On January 26, 2005, the director issued a Notice of Intent to Deny (NOID), indicating that the evidence of record did not establish the applicant's entry into the United States before January 1, 1982, his continuous unlawful residence in the United States through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988. The director also indicated that the applicant had failed to demonstrate the basic citizenship skills required under section 312[(a)] of the Immigration and Nationality Act, in the examination administered at his interview for LIFE legalization on March 19, 2003. The applicant was granted 30 days to submit additional evidence.

As far as the record shows, the applicant did not respond to the NOID. On March 9, 2005, the director denied the application on the ground that the applicant failed to establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, in particular during the years 1982 to 1985, as required to be eligible for legalization under the LIFE Act.<sup>1</sup>

On appeal, the applicant resubmits photocopies of the previously submitted affidavit from [REDACTED] dated May 22, 2002, and the earnings statements from 1987 and 1988. In addition, the applicant submits photocopies of a previously prepared affidavit from the applicant's brother, [REDACTED] in Decatur, Alabama, dated March 18, 2003, who stated that the applicant came to the United States in March or April 1979, and another affidavit from [REDACTED], dated February 19, 2005, claiming that the applicant lived in his home during January and February 1982, and was employed by him on a cash basis until 1985. According to the

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<sup>1</sup> The director did not revisit the issue of basic citizenship skills in the decision.

applicant, the evidence of record is sufficient to establish his continuous residence in the United States from before January 1, 1982 through May 4, 1988. The AAO does not agree.

The record shows that the applicant filed an application for temporary resident status as a special agricultural worker (Form I-700) on September 8, 1988.<sup>2</sup> On the Form I-700 the applicant identified [REDACTED] in Carlsbad, California, as his residence from May 1985 to the present, and indicated that this was his only residence in the United States since May 1, 1983. Thus, in 1988 the applicant stated that he did not reside in the United States before May 1985. This information conflicts with the applicant's claim in the current proceeding to have resided in the United States since 1979.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.*

The applicant has not resolved, or even acknowledged, the inconsistency between his statement in 1988 to have resided in the United States since May 1985, and the affidavits prepared by [REDACTED] and [REDACTED] in 2003 and 2005, who assert that the applicant was already living in the United States in the late 1970s and/or early 1980s.

The AAO notes that the affidavit from the applicant's brother contains the bald statement that the applicant came to the United States in March or April 1979, without any further information about the circumstances of his entry, where he lived in the United States in succeeding years, where he worked, or any other details whatsoever. The two affidavits from [REDACTED] while stating that the applicant lived with and worked for him from early 1982 to March 1985, do not identify [REDACTED]'s address at that time, do not explain what sort of work the applicant did for him, and are inconsistent as to when this arrangement began (the first affidavit said March 1982 and the second affidavit said January 1982). Moreover, [REDACTED] stated in both affidavits that he became acquainted with the applicant in the month the applicant began living with him. Thus, [REDACTED] does not claim to have known the applicant before January 1, 1982, or where he resided before that date. Based on the foregoing analysis, the AAO concludes that the three affidavits discussed above have little probative value as evidence of the applicant's residence in the United States before January 1, 1982.

In view of the documentary discrepancies discussed above, and the lack of credible evidence that the applicant's unlawful residence in the United States began before January 1, 1982, the AAO determines that the applicant has failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before

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<sup>2</sup> The application was denied by the Director of the Western Service Center on December 6, 2001. An appeal was dismissed by the AAO on July 12, 2001.

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 the LIFE Act, and the director's decision will be affirmed on this ground.

The appeal will be dismissed, and the application denied.

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