

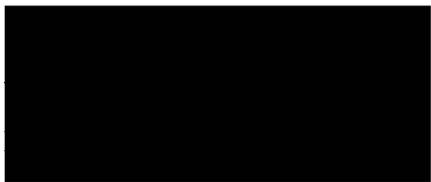
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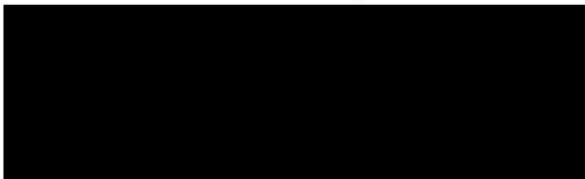
IN RE: Applicant:



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.

A handwritten signature in cursive script, appearing to read "R. Wiemann".

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 Dallas, Texas. 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 entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from that date through May 4, 1988.

On appeal the applicant asserts that the director's decision was erroneous. The applicant submits a brief and some additional documentation.¹

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).

“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.” (Emphases added.)

“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.” (Emphasis added.) 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.” (Emphasis added.) 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

¹ The appeal (Form I-290B), the appeal brief and the additional documentation were submitted by [REDACTED] of [REDACTED] in May and June 2006, accompanied by a Form G-28, Notice of Entry of Appearance as Attorney or Representative, signed by [REDACTED] and the applicant. Subsequent to these filings, however, another Form G-28 was filed by [REDACTED], signed by him and the applicant and dated September 2, 2006. The AAO notes that [REDACTED] previously represented the applicant in these proceedings, having submitted a letter and a Form G-28, co-signed by the applicant, on March 30, 2005. Based on the foregoing history and the Form G-28 most recently filed, the AAO recognizes [REDACTED] as the attorney of record, despite the fact that the appeal was filed by [REDACTED].

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 who claims to have lived in the United States since September 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on June 5, 2002. The applicant was subsequently interviewed for LIFE legalization on June 23, 2003 and April 8, 2004. On May 16, 2004 the director issued a Notice of Intent to Deny (NOID), indicating that the evidence of record – including a series of postmarked letter envelopes and affidavits from friends and relatives – did not establish the applicant’s continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The applicant responded with additional evidence unrelated to his residence in the United States during the requisite years.

On April 12, 2006 the director issued a Decision denying the application. The director found that 25 envelopes submitted by the applicant as evidence of his presence in the United States between 1981 and 1988 were fraudulent. The director also found that the other evidence of record – including affidavits from individuals who claim to have known, worked with, or employed the applicant during the 1980s and copies of some undated receipts and photographs – did not have sufficient probative value to demonstrate the applicant's residence in the United States at that time. The director concluded that the applicant had not established his continuous residence in the United States during the requisite period for LIFE legalization, in particular during the years 1982-1984.

On appeal the applicant contests the director's finding that the 25 envelopes previously submitted are fraudulent. He asserts that the envelopes document his correspondence during the 1980s with friends and relatives in Guerrero, Mexico, and that the director did not explain his reasoning that the envelopes were fraudulent. The applicant submits additional photocopies of envelopes with Mexican stamps and postmarks, many of which were already in the record, as well as some additional affidavits, tax records from 1984 and 1985, his Mexican identity card from 1985, and a personal photograph. According to the applicant, he has established by a preponderance of the evidence that he resided continuously in the United States from before January 1, 1982 through May 4, 1988.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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

The record does contain good evidence that the applicant resided in the United States during the years 1984 and 1985. This evidence consists of the following documentation:

Photocopied Form W-2, Wage and Tax Statements, showing that the applicant was employed in 1984 and 1985 by [REDACTED] restaurant in Garland, Texas, resided then at [REDACTED] in Dallas, and had gross earnings in those two years of \$2,671.62 and \$6,944.67, respectively.

- A photograph of the applicant standing beside an automobile with a Texas license plate and stickers indicating an expiration date of December 1984.

- A photocopied identity card issued to the applicant by the Consulate General of Mexico in Dallas, Texas, on February 27, 1985, identifying his residence as 812 Centre Street in Dallas.
- Medical records from the Dallas County Hospital District, dated in August 1985, which identify the applicant's address as 812 Centre Street and relate to an appendectomy performed that month.

A subsequent letter from the owner of [REDACTED], dated November 23, 1990, confirmed that the applicant, who was hired in September 1984, continued to work at the restaurant as a dishwasher until October 1987. This employment period at the restaurant is consistent with the dates given by the applicant in two Form I-687s (applications for temporary resident status) he filed in December 1990 and August 1991. In these forms the applicant also indicated that he was absent from the United States on two occasions since the beginning of 1982, each time for a period of two weeks, around Christmas of 1985 and Christmas of 1987. Based on the documentation discussed above, the AAO is persuaded that the applicant resided continuously in the United States from sometime in 1984 through May 4, 1988, the end of the statutory period for LIFE legalization.

As for evidence of the applicant's residence in the United States before 1984, the only documentation in the record ostensibly dating from the early 1980s are the letter envelopes, the earliest of which have postmark dates in 1981, 1982, and 1983. The director found that these envelopes, and all the others, were fraudulent. While the director did not explain the basis of her finding, as the applicant correctly points out, the AAO agrees with her conclusion. All of the envelopes have a curious black residue, which makes them appear older, and most of the stamps have had their monetary values torn off. There are at least four different stamps, however, whose monetary values can still be determined and which repeatedly appear on the envelopes postmarked in the years 1981-1983, as well as in later years. All of these envelopes are clearly fraudulent since the stamps, as indicated in the Scott 2006 Standard Postage Stamp Catalogue ("Scott Catalogue"), were issued by the Mexican government long after the postmark dates on the envelopes. Specific examples of fraud include the following stamps on envelopes postmarked in 1981, 1982 and/or 1983:

- A stamp dedicated to Chiapas, with a value of \$ 1.80, which was part of a "Tourism in States of Mexico" series issued in the years 1993-1996. See Scott Catalogue, Vol. 4, p. 809.
- A stamp dedicated to Yucatan, with a value of \$ 0.70, which was part of the "Tourism Type of 1993" series issued in the years 1999-2001. See Scott Catalogue, Vol. 4, p. 818.

- A stamp dedicated to Michoacan, with a value of \$ 5.30, which was part of the “Tourism Type of 1993” series issued in the years 1999-2001. See Scott Catalogue, Vol. 4, pp. 818-19.

A stamp entitled “Mexico Conserva mangalores” showing a mangrove swamp, with a value of \$ 0.50, issued as part of a conservation series on February 18, 2002, and reissued in 2003 and 2004. See Scott Catalogue, Vol. 4, p. 823.

In addition to the stamp and postmark fraud documented above, the AAO also notes that three of the envelopes addressed to the applicant at his Center Street address in Dallas bear postmarks which preceded the date he claims to have entered the United States. While the applicant asserts that he initially entered the United States in September 1981, three of the envelopes addressed to him are postmarked March 10, 1981, May 2, 1981, and August 5, 1981. The applicant has not explained why any letters would have been sent to Dallas at a time he still resided in Mexico.

Given the pervasiveness of the fraud discussed above, the AAO determines that the envelopes submitted by the applicant have no probative value. They are not persuasive evidence of the applicant’s residence in the United States before 1984. Moreover, doubt cast on any aspect of the applicant’s evidence also reflects on the reliability of the applicant’s remaining evidence. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

There is no primary evidence of the applicant’s residence in the United States before 1984, aside from the fraudulent and discredited envelopes, and the other evidence in the record is not sufficiently probative to overcome the fraudulent envelopes.

The applicant asserts that he worked at TJR Landscaping from November 1981 to March 1984, and the record includes an affidavit by [REDACTED], dated June 5, 1991, stating that he was a contractor for the company, employed the applicant during the dates indicated, paid him in cash, and kept no records. According to [REDACTED] TJR Landscaping was no longer in business by 1991. The affidavit from [REDACTED] does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because it did not provide the applicant’s address at the time of employment and, as acknowledged by [REDACTED], is not backed by any business records because none were kept on the applicant. In view of these crucial omissions, and the lack of any earnings statements or company records documenting the applicant’s employment, the AAO concludes that the [REDACTED] affidavit has little probative value. It is not persuasive evidence of the applicant’s continuous residence in the United States during the claimed period of employment from November 1981 to March 1984.

The other affidavits in the record – including half a dozen new ones filed on appeal – are from individuals who claim to have known the applicant during the 1980s. For the amount of time they claim to have known the applicant, the affiants provide remarkably little information about his life in the United States, and their interaction with him over the years. A number of the affiants do not claim to have known the applicant until 1982 or later in the 1980s, and therefore

have no personal knowledge of whether the applicant resided in the United States before 1982. Many of the affidavits have minimalist or fill-in-the-blank formats with limited personal input by the affiants. Moreover, none of the affidavits are accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant during the 1980s. In view of these substantive shortcomings, the affidavits in the record are not persuasive evidence of the applicant’s continuous residence in the United States from September 1981, the month he claims to have entered the country, up to 1984.

Based on the foregoing analysis, 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 January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act. Accordingly, the applicant is ineligible for permanent resident status under 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.