

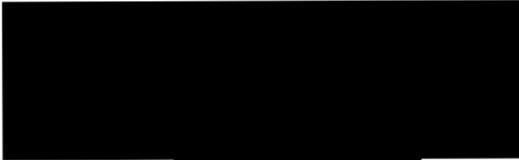


U.S. Citizenship
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FILE:

MSC 02 247 67342

Office: SACRAMENTO

Date: JUL 30 2008

IN RE:

Applicant:



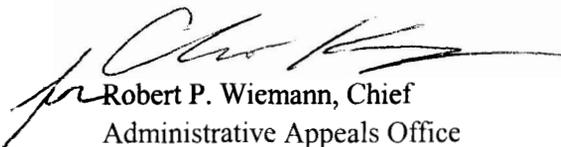
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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 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, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant reiterated his claim of residence in this country since 1979. The applicant asserted that he did not possess additional documentation to support his claim of residence because of his status as an undocumented alien.

An applicant for permanent resident status under section 1104 of the LIFE Act 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 and 8 C.F.R. § 245a.11(b).

The applicant 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 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 regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery;

establish how the author knows the applicant; and, establish the origin of information contained in the attestation.

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.* at 80. 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. *Id.*

Even if the director has some doubt as to the truth, if the petitioner 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, 431 (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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant filed his Form I-485 LIFE Act application on June 4, 2002. In support of his claim of continuous residence in the United States from prior to January 1, 1982, the applicant submitted two co-worker affidavits that are signed by [REDACTED] and [REDACTED] respectively. Both affiants stated that they worked with the applicant on farm labor crews at various farms from November 5, 1985 to February 27, 1986 including employment for farm labor contractor [REDACTED] at [REDACTED]s in Lake County, California. Both affiants indicated that there were no records to reflect such employment because they were always paid in cash. However, the affiants failed to provide any testimony relating to the applicant's residence in the United States in the periods from prior to January 1, 1982 up through November 5, 1985 and after February 27, 1986 through May 4, 1988.

The applicant provided an employment affidavit signed by farm labor contractor [REDACTED] who noted that the applicant worked for him pruning pears at [REDACTED]s in Lake County, California from November 5, 1985 to February 27, 1986. Regardless, Mr. [REDACTED] failed to provide the applicant's address of residence during that period he employed the applicant as required by 8 C.F.R. § 245a.2(d)(3)(i). Furthermore, Mr. [REDACTED] failed to attest to the applicant's residence in this country in the periods from prior to January 1, 1982 to November 5, 1985 and after February 27, 1986 through May 4, 1988.

The applicant included a letter on the letterhead stationery of Saint Mary's Church in Stockton, California that is signed by [REDACTED] who listed her position as Parish Administrator. Ms. [REDACTED] declared that the applicant, his wife, and three children were parishioners of this church since 1985. However, Ms. [REDACTED] failed to list the applicant's addresses of residence during the period he was affiliated with the church beginning in 1985 as required by 8 C.F.R. § 245a.2(d)(3)(v). In addition, Ms. [REDACTED] failed to provide any testimony regarding the applicant's residence in the United States prior to 1985.

The applicant submitted an unsigned letter that is attributed to Ms. [REDACTED] noted that the applicant, his wife, and three children lived in her home and ate at her restaurant, [REDACTED], from 1985 to 1987. Ms. [REDACTED] indicated that the applicant and his family worked for cash for farm labor contractor [REDACTED] at the [REDACTED] and [REDACTED] during this same period. Nevertheless, Ms. [REDACTED] failed to attest to the applicant's residence in this country from prior to January 1, 1982 up through 1985 and after 1987 through May 4, 1988. Moreover, the probative value of this letter is negligible as it is unsigned.

The applicant included two employment affidavits both of which are signed by farm labor contractor [REDACTED]. Ms. [REDACTED] stated she employed the applicant to pick and prune pears and grapes at various farms for 111 days from August 1, 1985 to February 15, 1986. Ms. [REDACTED] asserted that there were no records to reflect such employment because she always paid her employees in cash. However, Ms. [REDACTED] failed to provide the applicant's address of residence during that period he was her employee as required by 8 C.F.R. § 245a.2(d)(3)(i). Further, Ms. [REDACTED] failed to provide any testimony relating to the applicant's residence in the United States in the periods from prior to January 1, 1982 to August 1, 1985 and after February 15, 1986 through May 4, 1988.

The record shows that the applicant was interviewed regarding his Form I-485 LIFE Act application at the Citizenship and Immigration Services or CIS (formerly the Immigration and Naturalization Service or the Service) office in Sacramento, California on March 3, 2003. The notes of the interviewing officer reveal that the applicant testified that he entered the United States without inspection in March of 1982 and that he subsequently returned to Mexico in November 1983. The applicant further testified that he worked for the Mexican government, specifically the Treasury Department in the state of Michoacan, in 1983 and 1984 and that he then reentered the United States in March of 1985. The fact that the applicant provided testimony at his interview on March 3, 2003 that directly contradicted his claim of continuous residence in the United States during the requisite period seriously undermined his credibility.

The record shows that the district director issued a Form I-72, Request for Additional Evidence, to the applicant on September 17, 2003. The applicant was asked to provide additional evidence in support of his claim of residence in this country for the period in question and a completed Form G-325A, Report of Biographic Information.

In response, the applicant submitted the Form G-325A biographic report with an attachment in which he claimed to have been employed as a laborer by ██████████ in Stockton, California from January 1982 to September 1984. The applicant's claim that he was working in California as a laborer from January 1982 to September 1984 contradicted his prior testimony at his interview on March 3, 2003 that he entered the United States without inspection in March of 1982 and subsequently returned to Mexico in November 1983 to work for the Mexican government, specifically the Treasury Department in the state of Michoacan, in 1983 and 1984 and that he then reentered the United States in March of 1985.

The applicant provided a statement in which he claimed that he resided with his family at ██████████ in Stockton, California from 1982 to 1984. The applicant stated that he then moved to the home of ██████████ at ██████████ in Stockton, California from 1985 to 1987. The applicant contended that he then moved to ██████████ in Stockton, California in 1987. The applicant included a photocopy of a postmarked envelope that was purportedly mailed from Mexico to the applicant at the ██████████ address within the body of his statement. Although the postmark on the envelope is not completely legible, the envelope does contain Mexican postage stamps.

The applicant included an affidavit signed by ██████████ who declared that he had personal knowledge that the applicant resided in the United States since 1986 because the applicant had been a customer at his store, La Amapola Supermarket, since such date. Regardless, Mr. ██████████ failed to attest to the applicant's residence in this country from prior to January 1, 1982 up through 1986.

The applicant submitted a letter on the letterhead stationery of the *Organizacion de Trabajadores Agricolas de California* that is signed by ██████████ who listed his position as president. Mr. ██████████ testified that he had known the applicant since 1982 and that he was a good and respected member of the community. Mr. ██████████ noted that the applicant had been a member of this organization since its founding in 1992 and that he volunteered helping low income farm workers in the Latino community. However, Mr. ██████████ failed to provide any specific verifiable testimony such as how he met the applicant or the nature of his relationship with the applicant to corroborate the applicant's claim of residence in the United States for the requisite period.

The applicant provided an affidavit that is signed by ██████████. Mr. ██████████ asserted that he had personal knowledge that the applicant resided in this country since 1986 because the applicant had **been a** customer at his jewelry store, Genesis Joyeria, since such date. Nevertheless, Mr. ██████████ failed to attest to the applicant's residence in this country from prior to January 1, 1982 up through 1986.

The applicant included a co-worker affidavit signed by ██████████ who stated he had personal knowledge that the applicant resided in the United States since he and the applicant worked together as field workers harvesting different fruits and vegetables in 1982, 1983, and 1984. However, Mr. ██████████ failed to specify either the name of the employers for whom he

and the applicant worked or the locations where such work was performed. In addition, Mr. [REDACTED] failed to provide any relevant and detailed testimony regarding the applicant's residence in this country after 1984. Moreover, Mr. [REDACTED] failed to attest to the applicant's residence in this country prior to 1982.

The applicant submitted a co-worker affidavit that is signed by [REDACTED] Mr. [REDACTED] declared that he had personal knowledge that the applicant resided in the United States since he and the applicant worked together in 1985 and 1986 and had remained friends thereafter. Although Mr. [REDACTED] claimed that he and the applicant worked together in 1985 and 1986, he failed to state the nature of such work, the names of employers for whom he and the applicant worked, or the location where such work occurred. Furthermore, [REDACTED] failed to provide any testimony that the applicant resided in this country prior to 1985.

The applicant provided documentation from the Western Farm Workers Association including a membership card and a Spanish language Authorization of Membership. These documents purport to reflect that the applicant was a member of this organization from August 15, 1985 to February 15, 1988. However, these documents must be considered as less than probative of the applicant's claim of residence as neither the membership card nor the Authorization of Membership listed the applicant's addresses of residence during that period he had been affiliated with the Western Farm Workers Association as required by 8 C.F.R. § 245a.2(d)(3)(v). Additionally, neither document contains any information to substantiate the applicant's claim of residence in the United States from prior to January 1, 1982 through August 15, 1985 or after February 15, 1988 through May 4, 1988.

The applicant included a photocopied Memorandum dated February 17, 1987 from Pacific Landscaping to its employees that put forth this company's policy for holidays that fell on regularly scheduled workdays and the pay rates for work performed on such days. While this typed memorandum contains a hand-written notation that includes the applicant's name, it does not contain any further, detailed, or pertinent information to corroborate his claim of residence in this country for the requisite period.

The applicant submitted three photocopied envelopes which had been mailed from Mexico to the applicant at an address at which he claimed he began residing in 1987. However, the probative value of these three envelopes is minimal as none of the envelopes contains a discernible postmark demonstrating that such envelopes had been mailed to the applicant between the date he began residing at this address in 1987 and the end of the requisite period on May 4, 1988.

The applicant provided four photocopied receipts all of which bear dates within the requisite period. However, none of the four receipts bears any information relating to the applicant and therefore, are not probative of the applicant's claim of residence in the United States for the period in question.

On December 31, 2003, the district director issued a notice of intent to deny the application for failure to submit sufficient evidence of continuous unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant was granted thirty days to respond to the notice.

In response, the applicant reiterated his claim that he was eligible to adjust to permanent residence under the provisions of the LIFE Act because he resided in the United States for the requisite period. The applicant reaffirmed that he had performed agricultural labor in this country during the period in question.

The applicant provided a new affidavit signed by [REDACTED], the same individual who had previously submitted a co-worker affidavit in support of the applicant's claim of residence. In this new affidavit, [REDACTED] repeated his prior testimony that he and the applicant worked together as field workers harvesting different fruits and vegetables in 1982, 1983, and 1984. In addition, [REDACTED] claimed that the applicant was his tenant and paid rent to reside in a house he owned on property located at [REDACTED] in Stockton, California. However, neither [REDACTED] nor the applicant offered any explanation as to why [REDACTED] did not include his most current testimony that the applicant was his tenant and paid rent to reside in a house he owned on property located at [REDACTED] in Stockton, California in his prior affidavit. Further, [REDACTED] again failed to specify either the name of the employers for whom he and the applicant worked or the locations where such work was performed and did provide any relevant and detailed testimony regarding the applicant's residence in this country after 1984. Moreover, [REDACTED] failed to attest to the applicant's residence in this country prior to 1982.

The applicant included an affidavit signed by [REDACTED], the same individual to whom an unsigned letter previously submitted in support of the applicant's claim of residence had been attributed. [REDACTED] stated that the applicant and his family had been her tenants and paid rent to reside in a house she owned at [REDACTED] in Stockton, California. Nevertheless, Ms. [REDACTED] failed to attest to the applicant's residence in this country from prior to January 1, 1982 up through 1985 and after 1987 through May 4, 1988.

The applicant submitted three co-worker affidavits that are signed by [REDACTED] and [REDACTED], respectively. The affiants indicated they had personal knowledge that the applicant resided in the United States since 1982 because they and the applicant worked together as field workers in 1982. However, none of the affiants specified the nature of work that they and the applicant performed, the name of the employers for whom they and the applicant worked, and the locations where such work was performed. In addition, none of the affiants provided any specific verifiable testimony regarding the applicant's residence in this country after 1982. Moreover, none of the affiants attested to the applicant's residence in this country prior to 1982.

The district director determined that the applicant failed to submit sufficient credible evidence demonstrating his residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988, and, therefore, denied the Form I-485 LIFE Act application on February 26, 2004.

On appeal, the applicant reiterated his claim of residence in this country since 1979. The applicant asserted that he did not possess additional documentation to support his claim of residence because of his status as an undocumented alien. However, the supporting documents contained in the record lack specific detail and verifiable information to substantiate the applicant's claim of residence in the United States throughout the requisite period.

As previously discussed, the applicant submitted a statement that included a photocopy of a postmarked envelope that was purportedly mailed from Mexico to him at [REDACTED] in Stockton California within the body of his statement. Although the postmark on the envelope is not completely legible, the envelope does contain Mexican postage stamps. A review of the *2006 Scott Standard Postage Stamp Catalogue* Volume 4 (Scott Publishing Company 2005) reveals the following:

- One of the Mexican stamps affixed to this envelope has a value of sixty pesos and contains an illustration of a pair of men's shoes, the Spanish word for shoes "zapatos," and the notation "Mexico Exporta" encircling an eagle's head in the right hand corner. This stamp is listed at page 800 of Volume 4 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number 1467 A320. The catalogue lists this stamp's date of issue as 1986-1987.

The fact that an envelope purportedly mailed to the applicant at the address he claimed to have resided in the United States from 1982 to 1984 bears a stamp that was not issued until 1986-1987 establishes that the applicant utilized this document in a fraudulent manner and made a material misrepresentation in an attempt to establish his residence within the United States for the requisite period. As has been noted, the applicant previously testified that he entered the United States without inspection in March of 1982 and that he subsequently returned to Mexico in November 1983 at an interview conducted at the CIS office in Sacramento, California on March 3, 2003. The applicant further testified that he worked for the Mexican government, specifically the Treasury Department in the state of Michoacan, in 1983 and 1984 and that he then reentered the United States in March of 1985. The applicant subsequently contradicted this testimony by claiming that he was working in California as a laborer from January 1982 to September 1984 on an attachment to a Form G-325A biographic report submitted on December 22, 2003. By engaging in such action and offering contradictory testimony, the applicant seriously undermined his credibility.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and

attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The above derogatory information indicates that the applicant made a material misrepresentation in asserting his claim of residence in the United States for the period in question and thus casts doubt on his eligibility for adjustment to permanent residence under the provisions of the LIFE Act.

The AAO issued a notice to the applicant on June 4, 2008 informing him that it was the AAO's intent to dismiss his appeal based upon the fact that he utilized the postmarked envelope cited above in a fraudulent manner and made material misrepresentations by offering contradictory testimony in an attempt to establish his residence within the United States for the requisite period. The applicant was granted fifteen days to provide evidence to overcome, fully and persuasively, these findings. However, as of the date of this decision the applicant has failed to submit a statement, brief, or evidence addressing the adverse information cited above relating to his claim of residence in the United States since prior to January 1, 1982.

The absence of sufficiently detailed supporting documentation, the contradictory nature of the applicant's own testimony, and the existence of derogatory information that establishes he used a postmarked envelope in a fraudulent manner all seriously undermine the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States for the requisite period by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. Because the applicant has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that he submitted a falsified document, we affirm our finding of fraud. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

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