

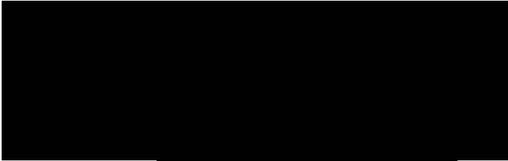
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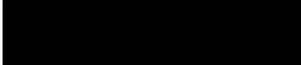
**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: MIAMI, FL

Date:

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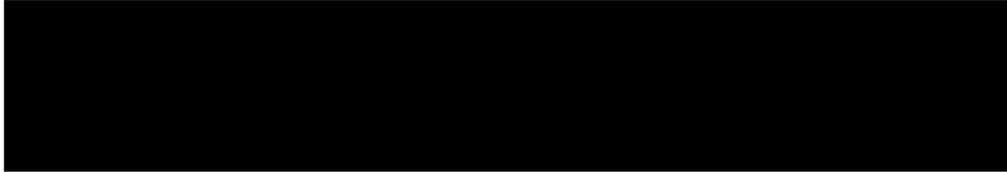
Applicant:



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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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 Acting District Director (director), Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The matter will be returned to the director to continue the adjudication of the application for permanent resident status.

The director determined that the applicant had not provided evidence to adequately establish that he resided in the United States in a continuous, unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel asserted that the applicant provided sufficient and credible evidence to establish continuous, unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must establish his or her continuous, unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act states in relevant part:

(i) In General – The alien must establish that he or she entered the United States before January 1, 1982, and has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

See also 8 C.F.R. § 245a.11(b).

An individual who applies 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 amenability to verification. 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 states 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.

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 (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 either to request additional evidence,

or if that doubt leads the director to believe that the claim is probably not true, to deny the application or petition.

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 AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO’s *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.¹

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

On or about May 30, 1990, the applicant applied for class membership in a legalization class-action lawsuit. The applicant filed the Form I-687, Application for Status as a Temporary Resident, on November 9, 1988.² On June 28, 2001, the applicant filed the Form I-485, Application to Register Permanent Resident or Adjust Status.

In support of his claim of residence in the United States since a date prior to January 1, 1982 through May 4, 1988, the applicant submitted:

1. The affidavit of _____ of Hialeah, Florida, in which the doctor attested: that he specifically remembers the applicant as being one of his patients beginning in the early ‘80s and that he recognizes the copy of patient treatment notes, taken from the applicant’s medical file and submitted into the record, as being notes which he wrote to record his treatment of the applicant. The affidavit is amenable to verification in that it includes the doctor’s address and telephone number.

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

² On June 17, 2005, the applicant also submitted a Form I-687 in connection with an application filed under the *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal.) January 23, 2004, or *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal.) February 17, 2004, (CSS/Newman Settlement Agreements). The record of proceedings and Citizenship and Immigration Services (CIS) electronic databases indicate that this application has not yet been adjudicated.

2. A copy of patient treatment notes from the applicant's medical file signed by [REDACTED] and notarized. These notes reflect that the applicant became [REDACTED]'s patient in November 1981, that [REDACTED] treated the applicant on November 14, 1981, on May 21, 1982, on October 1, 1984, on July 6, 1985, on March 3, 1987 and on November 12, 1987.
3. A copy of [REDACTED]'s license to practice medicine in Florida.
4. A copy of [REDACTED]'s business card, signed by [REDACTED] and notarized, as well as an original business card for [REDACTED].
5. A copy of a letter from [REDACTED], Manager, Hialeah Medical Plaza dated May 24, 1983 on Hialeah Medical Plaza letterhead stationery, which welcomes [REDACTED] to this medical plaza and offers instructions on how to pay for cabinets [REDACTED] ordered for his suite at the plaza.
6. The statement of [REDACTED] of Maracaibo, Venezuela dated September 21, 1988 written in Spanish and translated into English. The original is on a form which has imprinted at the top the document number [REDACTED] and a seal that appears to be the seal of the country of Venezuela. In the statement as translated, [REDACTED] indicated that his Venezuelan-based company, Veneximport, had had an office at [REDACTED] Miami, Florida, and that the applicant was employed by him at this office on a part-time basis from 1981 through 1983. The accuracy of the translated statement is sworn to by the translator and notarized. Mr. [REDACTED]'s statement, itself, however, is not notarized, nor is the statement readily amenable to verification. This office does note, however, that the Florida Department of State Division of Corporations lists [REDACTED] as a registered agent of Venex Import of Miami, Inc., a company that registered in Florida in 1976, and which was involuntarily dissolved in Florida on November 10, 1983. This and other information on this company may be accessed at http://www.sunbiz.org/scripts/cordet.exe?action=DETFIL&inq_doc_number=496523&inq_ca_me_from=NAMFWD&cor_web_names_seq_number=0000&names_name_ind=N&names_cor_number=&names_name_seq=&names_name_ind=&names_comp_name=VENEXIMPORT&names_filing_type= (accessed February 29, 2008).
7. The statement of [REDACTED] of Penbroke Pines, Florida which is not dated that indicates that [REDACTED] has known the applicant since October 1981, when the applicant was working for Veneximport and [REDACTED] was working for Data Control as a clerk, both of which were located at [REDACTED] Coral Gables, Florida. The document is amenable to verification in that it includes [REDACTED]'s address and telephone number.
8. The Form I-687 submitted on November 9, 1988 which indicates at item #36 that the applicant worked for Venix Import/Export as a clerk from October 1981 through March 1983.
9. The Form I-687 submitted on June 17, 2005 which indicates at item #33 that the applicant worked for Venex Import/EXPORT as a clerk from October 1981 through March 1983.

10. The statement of [REDACTED] dated October 14, 1988 on [REDACTED]'s accounting firm's letterhead stationary which indicates that the applicant resided at [REDACTED]'s home at [REDACTED] Miami, Florida from approximately August 1981 through mid-1983 and that the applicant did work for [REDACTED] family and work around his home during that period.
11. A copy of the 1980 real property tax bill sent to [REDACTED] and [REDACTED] for [REDACTED] Miami, Florida. [REDACTED] submitted this document to support his statement dated October 14, 1988.
12. A copy of a microfiche photograph of the quit-claim deed for [REDACTED] Miami, Florida, which indicates that on November 5, 1981 [REDACTED] and [REDACTED] executed a quit-claim deed for this property. The deed which was registered January 18, 1983 appears to transfer the property to [REDACTED]. [REDACTED] submitted this document to support his statement dated October 14, 1988.
13. A copy of a letter from the Internal Revenue Service addressed to [REDACTED] and [REDACTED] at [REDACTED] South Miami, Florida dated January 9, 1981. Mr. [REDACTED] submitted this document to support his statement dated October 14, 1988.
14. The Form I-687 submitted on November 9, 1988 which indicates at item #33 that the applicant resided at [REDACTED] Coral Gables, Florida from August 1981 through May 1983.
15. The Form I-687 submitted on June 17, 2005 which indicates at item #30 that the applicant resided at [REDACTED], Coral Gables, Florida from August 1981 through May 1983.
16. The statement of [REDACTED] dated November 7, 1988 on which [REDACTED] indicated that from fall 1983 through 1984, she employed the applicant as a bus boy at her restaurant, [REDACTED], in Hollywood Beach, Florida. The document is amenable to verification in that [REDACTED] included her address and her telephone number.
17. The statement of [REDACTED] of Ft. Lauderdale, Florida dated October 31, 1988 on which [REDACTED] states that he has known the applicant since November 1983 when he worked at [REDACTED] as a bus boy, and that the applicant lived at [REDACTED] parent's home at [REDACTED], Hollywood, Florida from the end of 1985 through the end of 1986. The document is amenable to verification in that [REDACTED] included two telephone numbers.
18. The Form I-687 submitted on November 9, 1988 which indicates at item #33 that the applicant lived at [REDACTED] Hollywood, Florida from January 1986 through December 1986.
19. The Form I-687 submitted on June 17, 2005 which indicates at item #33 that the applicant lived at [REDACTED], Hollywood, Florida from January 1986 through December 1986.

20. The applicant's Form I-690 received on November 9, 1988 on which the applicant acknowledged that he had procured or attempted to procure a visa by fraud or misrepresentation.
21. A printout from an electronic database relating to nonimmigrant entries into the United States which records the applicant's entry on September 30, 1984 at Miami, Florida as a B2, visitor for pleasure.
22. The applicant's original driver's license receipt dated December 6, 1984 and issued in Florida.
23. An acknowledgement letter from the Selective Service System dated March 28, 1985 which verifies that the applicant had registered with the Selective Service.
24. The letter of [REDACTED] Human Resources Secretary, Gould Electronics on Gould Electronics letterhead stationary dated October 5, 1988 on which [REDACTED] stated that the applicant was employed at Gould Electronics as a Data Control Clerk from September 18, 1986 through March 25, 1988. The letter includes [REDACTED] telephone number and address, and as such is amenable to verification.
25. A copy of two of the applicant's progress reports from the Sheridan Vocational Technical Center, Hollywood, Florida, one of which covers the dates: June 24, 1985 through August 21, 1985. The other progress report apparently covers the dates: February 3, 1985 through June 18, 1985. However, the teacher who completed this report failed to list the year, when dating this document. Instead, the teacher indicated that the applicant's progress report began on "February 3" and the teacher then signed off on this report on "April 9" and again on "June 18". The applicant's training was in data processing and business computer programmer skills.
26. A copy of the applicant's progress report from the Sheridan Vocational Technical Center covering the period from September 1985 through January 28, 1986. The applicant apparently received grades of incomplete in the computer programming course that he enrolled in during this period.
27. A high school diploma for the applicant which was issued on December 16, 1986 by the State of Florida Department of Education.
28. A copy of the applicant's lease dated December 22, 1986 for an apartment at [REDACTED] [REDACTED] Hollywood, Florida. The apartment was owned by Ridgeback Investments N.V.
29. Original rent receipts which indicate Ridgeback Investments received rent from the applicant on May 4, 1987, August 7, 1987 and September 2, 1987.
30. Original envelopes addressed to the applicant in Florida and postmarked: October 4, 1984 in Colombia and October 7, 1984 in Florida; November 16, 1984 in Colombia and November 20, 1984 in Florida; November 8, 1985 in Colombia and November 12, 1985 in Florida; November

26, 1985 in Colombia and December 11, 1985 in Florida; February 21, 1986 in Colombia; July 18, 1986 in Colombia and July 22, 1986 in Florida; December 1, 1987 in Colombia and December 12, 1987 in Florida.

31. A copy of a lease agreement between the applicant and Reagan Apartments management for an apartment at _____ Hollywood, Florida for the period covering May 1, 1988 through November 3, 1988. The document was signed by the applicant and the apartment manager on June 12, 1988.
32. A letter from the Social Security Administration (SSA) addressed to the applicant in Hollywood, Florida which is not dated and which indicates that during 1986 the applicant used a Social Security number which according to SSA records was not assigned to him.

The record does not include further evidence directly relevant to the applicant's claim that he resided in the United States continuously during the statutory period.

On December 29, 2004, the director issued a Notice of Intent to Deny (NOID). In the NOID, the director stated that the applicant did establish continuous residence in the United States from 1984 through May 4, 1988. However, the director found that the applicant's contemporaneous evidence of having visited the doctor in Florida on various occasions on dates that fell from prior to January 1, 1982 through 1984 and following was not sufficient to establish continuous residence in the United States during the initial portion of the statutory period. The director also indicated in the NOID that he would not accept the affidavits and statements which the applicant submitted to demonstrate continuous residence in the United States during the initial portion of the statutory period because these were not corroborated by contemporaneous evidence. This point in the director's NOID is withdrawn. The regulations do permit affidavits which are amenable to verification and other relevant documents to establish continuous residence on their own. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L). It is only when the affidavits and statements submitted into the record contain material inconsistencies which cast doubt on the evidence that the applicant, in order to establish his or her claim, must provide independent, contemporaneous evidence. *See Matter of Ho*, 19 I&N Dec. 582 (BIA 1988)(which states that the applicant must resolve inconsistencies in the record by independent objective evidence, and attempts to explain inconsistencies, absent competent objective evidence pointing to where the truth lies will not suffice.)

Moreover, the AAO would underscore that in this instance the applicant has, in fact, provided contemporaneous evidence to corroborate the affidavits and statements in the record to support the claim that he resided in the United States during the initial portion of the statutory period. A copy of the doctor's notes relating to the applicant's regular visits to the doctor during the statutory period do tend to establish continuous residence in the United States. This is evidence is especially probative when, as here, it is accompanied by the detailed affidavit from the applicant's doctor that indicates that the doctor specifically remembers having the applicant as his patient during the relevant period, and when the doctor willingly supports such affidavit with a notarized copy of his medical license and a copy of professional correspondence sent directly to the doctor during the relevant period.

In the NOID, the director also indicated that the applicant had made conflicting claims under oath. However, the director did not identify any conflicting information that the applicant had given. This office has reviewed the

record and is unable to find evidence that the applicant gave any conflicting statements under oath. There are minor inconsistencies in the record such as slight variations in the house numbers of addresses at which the applicant claimed to have lived.

For example, in [REDACTED] statement dated October 31, 1988, he indicated that the applicant had lived at his parent's home at [REDACTED], Hollywood, Florida. However, on the two Forms I-687 submitted into the record, the applicant listed this address as [REDACTED] Hollywood, Florida. Also, in [REDACTED] statement dated October 14, 1988 he indicated that the applicant had lived in his home with the address [REDACTED] Miami, Florida from August 1981 through mid-1983. The copy of the quit-claim deed and the copy of [REDACTED] and [REDACTED]'s real property tax bill submitted into the record corroborate that [REDACTED] is the relevant house number. However, on the first Form I-687 submitted, the applicant listed this address as [REDACTED] Coral Gables, Florida. On the Form I-687 submitted in 2005, the applicant modified this address to [REDACTED] Coral Gables, Florida.

First, it is noted that the [REDACTED] address is near the Miami/Coral Gables border, and that the record indicates that in 1983 the applicant moved from [REDACTED] Miami to [REDACTED] Coral Gables which is only a few, major intersections away.³ Taking this information into account, the AAO finds that listing the [REDACTED] address in Coral Gables, instead of Miami is not an inconsistency significant enough to cast doubt on the evidence. The AAO also would emphasize: that the "[REDACTED] house number was corrected to "[REDACTED] when the applicant submitted the Form I-687 the second time and that [REDACTED] statement that the applicant resided at this address was on [REDACTED] accounting firm's letterhead stationary, it included his Certified Public Accountant number, and the statement is amenable to verification. Thus, this office finds that the fact that the house number was initially listed as [REDACTED] without the ending "[REDACTED] is not a significant enough inconsistency to cast doubt on the evidence. Similarly, writing the house number on the [REDACTED] address as [REDACTED] rather than [REDACTED]" is not a significant enough inconsistency to cast doubt on the applicant's claim that he lived at this address and resided in the United States during 1986. This is particularly true given that the applicant submitted evidence to corroborate that he resided in the United States during 1986 such as a copy of his high school diploma, a copy of the progress report from Sheridan Vocational Technical Center and the Gould Electronics employment letter dated October 5, 1988.

In the rebuttal to the NOID dated January 27, 2005, counsel asserted that the evidence in the record did clearly establish that the applicant had resided continuously in the United States during the statutory period.

On September 27, 2005, the director denied the application for the reasons set out in the NOID.

On appeal, counsel again indicated that all the evidence and statements provided by the applicant were consistent and did establish that he had resided continuously in the United States during the statutory period.

The AAO finds that the preponderance of the evidence in the record does establish that the applicant resided continuously in the United States during the statutory period, and establishes his continuous physical presence

³ This information was obtained using the driving directions feature at www.mapquest.com (accessed March 3, 2008) and inserting the [REDACTED] South Miami address and the [REDACTED] Coral Gables address as the start and end points of a trip.

in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B) of the LIFE Act. As stated in *Matter of E-M-*, 20 I&N Dec. at 80, when something is to be established by a preponderance of the evidence, the proof submitted by the applicant has to establish only that the asserted claim is probably true. That decision also states that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. *Id.* at 79. The documents that the applicant furnished may be accorded substantial evidentiary weight and are sufficient to meet the burden of proof of continuous residence and continuous presence in the United States for the requisite periods. Consequently, the applicant has overcome the particular basis of denial cited by the district director.

The appeal will be sustained. The matter will be returned to the director to continue the adjudication of the application for permanent resident status.

Also, the record indicates that in 1984 the applicant procured a visa by fraud or misrepresentation, and consequently he submitted the Form I-690 which has not yet been adjudicated. It is noted that such grounds of inadmissibility may be waived for humanitarian purposes, to assure family unity, or where it is otherwise in the public interest. *See* 8 C.F.R. § 210.3(e)(2).

ORDER: The appeal is sustained. The director shall continue the adjudication of the application for permanent resident status.