



U.S. Citizenship
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FILE: 
MSC02 239 61601

Office: DALLAS

Date: **MAR 13 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. 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 District Director (director), Dallas, 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 complete the adjudication of the application for permanent residence.

The director denied the application because she determined that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserted that the applicant did establish continuous, unlawful residence in the United States during the statutory period. He indicated that where affidavits are credible and verifiable such evidence is sufficient to establish continuous unlawful residence. He stated that the affidavits submitted in this instance are credible and verifiable.

An alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is ineligible for adjustment to Lawful Permanent Resident status. 8 C.F.R. § 245a.18(a)(1).

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 through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(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 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 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.

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).

Here, the submitted evidence is relevant, probative and credible.

On or about May 7, 1990, the applicant applied for class membership in a legalization class-action lawsuit and submitted Form I-687, Application for Status as a Temporary Resident. On May 27, 2002, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status.

The record includes the following documents related to the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988:

1. The transcript of the applicant's testimony from his March 17, 1992 suspension of deportation hearing before the Executive Office of Immigration Review. The record indicates that this testimony was deemed credible by the Immigration Judge and the Board of Immigration Appeals. The applicant testified that he has had three years of schooling in Mexico and that he is not fluent in English. He first entered the United States without inspection in 1975. He did tree trimming work after arriving in this country. He was, however, stopped by U.S. Immigration and returned to Mexico after signing a Voluntary Return agreement. (According to the Form I-256A, Application for Suspension of Deportation, in the record, the applicant's Voluntary Return to Mexico occurred during February 1976.) After this, for five years, he tended the boiler and washing machines at a public bath house in Mexico. In February 1981, he re-entered the United States without inspection. To support himself, he worked for an apartment manager. In 1982, his wife entered the United States. The applicant also testified that he left the United States to see his children and parents in Mexico during 1982, 1984, and 1985 for about two weeks each time. He did not exit the United States again until 1989. The applicant testified that at the time of his suspension of deportation hearing, he worked installing carpets as a subcontractor. He would set up contracts to install carpets with more than just one company, but he indicated that [REDACTED] was the primary company for which he subcontracted during the five or six years that preceded his suspension of deportation hearing.
2. A preprinted rental agreement form and lease form, each signed and dated April 30, 1990. Each form is filled with notations made by [REDACTED] an apartment manager. It appears that it was [REDACTED] intent that the two forms be read together, and that she used these forms, (meant to establish a rental agreement and lease agreement between a tenant and a landlord,) as a means by which to document for the applicant the work contract that he performed in exchange for rent while living at [REDACTED] and [REDACTED] which are apartment buildings where [REDACTED] was manager in Dallas, Texas. [REDACTED] included handwritten information on the rental agreement form which indicates that from February 1, 1981 through July 14, 1983, the applicant lived at [REDACTED] Dallas, Texas and that he was employed during this period as a maintenance man for these apartments in exchange for rent. [REDACTED] also explained that the applicant's wife, [REDACTED] came to live with the applicant during September 1982. Consequently, beginning in September 1982, [REDACTED] had the applicant pay \$25 per week or \$100 per month in rent in addition to his carrying out work as maintenance man to cover rent. In the

section of the rental agreement titled "monies received", indicated that from September 1982 through July 1983 the applicant paid \$25 per week or \$100 per month total. (Thus the form taken as a whole suggests that from February 1981 until September 1982, the applicant did not pay money, he only worked for his rent.) also indicated on the rental agreement that the reason she allowed this special arrangement to cover the rent had to do with the fact that the applicant and his young brother appeared to have no other place to live or other way to pay for rent when she met them in 1981.¹ On the preprinted lease form that followed the rental agreement, indicated that the notations on that form document the applicant's work contract from July 1983 onwards, the period during which the applicant, his wife and his younger brother lived in an apartment building at Dallas, Texas.² indicated that beginning in July 1983 the applicant continued to pay \$100 per month and continued to serve as a maintenance man.

3. A statement from Dallas, Texas, dated December 5, 1991 which indicates that she has known the applicant since 1981.
4. The Form I-256A submitted December 18, 1991 which indicates at item #7 that the applicant lived at Dallas, Texas from February 1981 through July 1983, and at Dallas, Texas from July 1983 through August 1989. The form also indicates at item #8 that the applicant worked as a maintenance man at from February 1981 through July 1984, and as a carpet installer from July 1984 through the date that form was submitted. (An attached cover sheet indicates that Immigration Counseling Services, Catholic Charities, Dallas, prepared this application for the applicant.)
5. The Form G-325A signed by the applicant on November 12, 1991 which indicates that the applicant lived at Dallas, Texas from February 1981 through July 1983 and at Dallas, Texas from July 1983 through August 1989.
6. The affidavit of , the applicant's brother, of Dallas, Texas, dated May 3, 1990 which indicates that he is a carpet installation subcontractor who does work *primarily* for

¹ This office notes that the Form I-687. A lication for Temporary Resident Status, in the record indicates at item #32, that the applicant's brother was living with the applicant and his wife at the time that form was filed in 1990 and that he had turned nine years old in December 1981. refers to as nine-years-old both when documenting the applicant's work-for-rent arrangement while on and while on . This office notes that she filled in these forms on the same day in 1990 and it appears that she was estimating from memory how young was during this period and only included his approximate, young age to help illustrate why she agreed to allow the applicant to work as a maintenance man in exchange for rent.

² This form seems to have had certain information pre-filled in by hand by the property's owner . Apparently, the owner provides forms with certain information already completed and she fills in only information that is specific to an individual tenant.

Grand Prairie, Texas, and that the applicant was in his employ as a carpet installer from July 1984 through November 1987.

7. The Notice of Intent to Deny (NOID) dated December 14, 2004 in which the director indicated that she intended to deny the applicant's request because he claimed to have worked for from July 1984 through November 1987; however, records relating to indicate that this company was not incorporated in Texas until July 1988.
8. The statement of written on High Tech Carpets facsimile transmittal sheet/business letterhead dated January 8, 2005 addressed to the applicant, the body of which states the following:

To Whom It May Concern:

My name is This statement is testimony that my company conducted business until 1989 in the State of Texas in Austin, San Antonio, Arlington, Texas as well as in Atlanta, GA and Springfield, VA. In the State of Texas, we did business as Interiors which was a D.B.A.

I can be reached at was in business from 1980 until 1988.

The applicant included this statement with his response to the NOID.

9. A page from the State of Texas Comptroller of Public Accounts website located at: http://ecpa.cpa.state.tx.us/coa/servlet/cpa.app.coa.CoaGetTp?Pg=tpid&Search_Nm=&Button=search&Search= accessed February 4, 2008, that states that with a Registered Agent named had a July 1, 1980 charter date in Texas. The Texas Comptroller of Public Accounts website lists a helpline (800-252-1386) which the public may use to obtain additional information from the Comptroller's office. On February 4, 2008, the representative at the Comptroller's office helpline verified that from 1980 through 1989 in certain cities in Texas operated under the name
10. A second statement from the applicant's brother, dated January 12, 2005 which indicates that is a lawful permanent resident and that the applicant worked with as a subcontractor from 1984 until 1988 on behalf of " " for whom was also a subcontractor. indicated that he paid the applicant in cash.
11. A page from the State of Texas Comptroller of Public Accounts website located at: http://ecpa.cpa.state.tx.us/coa/servlet/cpa.app.coa.CoaGetTp?Pg=tpid&Search_Nm=&Button=search&Search=, accessed February 4, 2008, that states that [listed at the same address as that listed

for [REDACTED] (in #9 above)] with a Registered Agent named [REDACTED] had a July 1, 1988 charter date in the State of Texas.

12. The affidavit of [REDACTED] of Ennis, Texas dated March 17, 2003 on which Mr. [REDACTED] attested that the applicant installed carpets on behalf of his company Fashion [REDACTED]. [REDACTED] attested that initially it was the applicant's brother [REDACTED] who hired the applicant directly and that [REDACTED] paid [REDACTED] as a subcontractor who in turn paid the applicant. The affidavit does not specify when the applicant began working full-time for [REDACTED]. [REDACTED] did attest that he first met the applicant in 1985 when his brother [REDACTED] began installing carpets for him and that by 1989, the applicant had his own carpet installation business and [REDACTED] then made business with the applicant directly. [REDACTED] also attested that he had attached a copy of the registration letter indicating that the Articles of Incorporation of [REDACTED] had been filed with the Texas Secretary of State.

13. A copy of the letter from the Texas Secreta of State dated March 30, 1979 that indicates that the Articles of Incorporation for [REDACTED] were placed on record with that office.

14. The statement of [REDACTED] of [REDACTED] dated May 7, 2002 which indicates that [REDACTED] met the applicant in approximately 1985, that the applicant was working full-time for him by the time [REDACTED] went into semi-retirement in 1995, and that the applicant worked for him on an as needed basis when he came out of retirement in 1997.

15. The statement of [REDACTED] Vice-President of [REDACTED] dated April 26, 1990 in which [REDACTED] indicated that he had knowledge that the applicant worked for various subcontractors which were in turn employed by [REDACTED] from November 1987 through the date that [REDACTED] signed this statement.

16. The affidavit of [REDACTED] of Smithville, Texas dated May 15, 2002 in which [REDACTED] attested that he has known the applicant since the two of them were children in Michoacan, Mexico and that the applicant came to the United States in approximately 1981.

17. The affidavit of [REDACTED] of Smithville, Texas dated June 5, 2003 in which [REDACTED] attested that the applicant came to the United States in approximately 1981. [REDACTED] also attested that the applicant worked as a maintenance man at [REDACTED] Dallas, Texas. [REDACTED] attested that the applicant began installing carpets with the applicant's brother [REDACTED] in approximately 1984. His brother [REDACTED] was working for [REDACTED] according to [REDACTED]. [REDACTED] attested further that a "couple years later" the applicant began working directly for [REDACTED] as a carpet installer.

18. The statement of [REDACTED] of Dallas, Texas dated December 5, 1991 which indicates that [REDACTED] has known the applicant since April 10, 1984.

19. The statement of [REDACTED] of Dallas, Texas dated May 14, 2002 which indicates that [REDACTED] has known [REDACTED] since 1985. [REDACTED] did not indicate to which Mr. [REDACTED] she was referring, the applicant or some other [REDACTED]
20. The statement of [REDACTED] of Dallas, Texas dated January 11, 2005 which indicates that [REDACTED] has known the applicant since 1975. The wording of the statement indicates that [REDACTED] is not entirely fluent in English. It also indicates that Mr. [REDACTED] worked in the past as a subcontractor for [REDACTED] as did the applicant's brother [REDACTED]. On several occasions, the dates of which and the frequency of which are not specified, during or between the years of 1980 and 1988, Mr. [REDACTED] would allow the applicant to work with him, when [REDACTED] did not have enough work to employ the applicant. [REDACTED] stated that on such occasions he would pay the applicant in cash. He provided an address and telephone number by which to reach him for additional information.
21. The statement of [REDACTED] of Dallas, Texas dated December 5, 1991 which indicates that [REDACTED] has known the applicant "since he arrived from Mexico March 1981" and that he has kept in touch with him since that time.
22. The Form I-687, Application for Status as a Temporary Resident, dated and signed by the applicant on May 3, 1990. The form is also dated May 3, 1990 and signed by [REDACTED] a tax preparer, at item #46, the box set aside for the signature of the individual who prepared this form. This form indicates at item #36 that the applicant worked as a maintenance man at [REDACTED], Dallas, Texas from February 1981 through July 1984, and that he worked as a "laborer" at [REDACTED] Grand Paraire, TX"³ from July 1984 through November 1987, and as a "laborer" at [REDACTED], TX"⁴ from November 1987 through the date that form was signed. This form indicates at item #33 that the applicant lived at [REDACTED] Dallas, Texas from "02-81- 02-83" and at [REDACTED] Apt. 5, Dallas, Texas from "02-83-01-89".
23. The affidavit of [REDACTED] z dated May 4, 2002 in which [REDACTED] attested that the applicant arrived in the United States in 1981. He attested that he met the applicant because he was close friends with the applicant's uncle [REDACTED]. [REDACTED] attested that they would "frequent each other on weekends", with either [REDACTED] and the applicant

³ The affidavit of [REDACTED] dated May 3, 1990, the Form I-256A, the Form G-325A dated November 12, 1991 and various other forms in the record all indicate that this company name is spelled [REDACTED] it is located in Grand Prairie, Texas, and the applicant did carpet installation work on behalf of this company.

⁴ The affidavit of [REDACTED] the Form I-256A, the Form G-325A dated November 12, 1991 and other forms in the record indicate that the full name of this company is [REDACTED] it is located in DeSoto, Texas, and the applicant did carpet installation work on behalf of this company.

visiting the affiant or he visiting the applicant at [REDACTED] Dallas, Texas. He attested that the applicant worked as a maintenance man "in or about 1983" and he moved to another apartment complex on [REDACTED]. This complex was owned by the same company where he had previously lived. The applicant continued to work as a maintenance man. "In or about 1985" the applicant moved to his brother [REDACTED]'s home on [REDACTED] Dallas. He no longer worked as a maintenance man but as a carpet installer with his younger brother [REDACTED]. He attested that the information that he gave was "true to the best of his knowledge".

24. The affidavit of [REDACTED] dated June 3, 2003 in which the affiant attested that he has known the applicant since approximately 1981. He attested that he met the applicant "when or at" [REDACTED] Dallas, Texas, where the applicant later began working as a maintenance man in 1983. He attested that the information he gave was "true to the best of his knowledge".

There are no other documents in the record relevant to the applicant's claim that he resided continuously in the United States during the statutory period. The record does include documentation that on March 18, 2003 the applicant passed the U.S. history/civics test as well as the reading and writing in English tests as required by the LIFE Act.

On December 14, 2004, the district director issued a Notice of Intent to Deny (NOID). She concluded that the applicant had failed to submit adequate, credible evidence of continuous, lawful residence in the United States from prior to January 1, 1982 through May 4, 1988. Specifically, the director found that the applicant had claimed to have worked for a subcontractor employed by [REDACTED] from July 1984 through November 1987. However, the director had information which indicated that [REDACTED] did not come into existence until July 1988. Thus, the director concluded that the applicant had not provided credible evidence of continuous residence in the United States during the statutory period.

In response, the applicant submitted a statement from [REDACTED] which indicates that his company [REDACTED] Inc. operated in various cities in Texas as [REDACTED] from 1980 through 1989. Information from the State of Texas Comptroller of Public Accounts Office, as summarized at item #9 above, confirmed the accuracy of [REDACTED]'s statement. Thus, this office finds that the applicant overcame this basis of the director's decision to deny.⁵

On June 15, 2005, the director denied the application. The director stated that the applicant claimed to have worked as a maintenance man from 1981 through 1984, but had not provided any independently verifiable evidence of this. The director also asserted that one statement in the file indicated that the applicant worked in the United States during 1980. Yet, the applicant had stated that he had not reentered the United States until 1981. The director concluded that the applicant had failed to provide credible and verifiable evidence of having resided continuously in the United States during the statutory period.

⁵ In the Notice of Decision dated June 15, 2005, the director indicated that the applicant had failed to overcome the director's basis of denial as set forth in the NOID. This point in the director's denial is withdrawn.

On appeal, counsel asserted that affidavits are sufficient to substantiate a claim of continuous unlawful residence in the United States during the statutory period where the affidavits submitted are credible and verifiable.

As noted earlier, if the applicant submits evidence that leads Citizenship and Immigration Services (CIS) to conclude 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). Moreover, 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).

First, it is noted that when the applicant was able to provide his own testimony regarding his presence in the United States during the statutory period through a Spanish-language translator, and when preparing the Form I-256A with the help of an agency that has expertise in preparing immigration applications, he provided a consistent, detailed account of having first entered the United States in 1975 and of being returned to Mexico after signing a Voluntary Return form during February 1976. His testimony and his Form I-256A detail the work that he then did in Mexico, and his return to the United States in early 1981. The applicant also gave consistent testimony of being referred to a woman who worked as an apartment manager after arriving in the United States.

In an effort to provide documentary evidence of his work as an apartment maintenance man and of his residence in the United States from 1981 through 1984, the applicant submitted the rental agreement and lease forms on which the apartment manager, [REDACTED], described in relatively detailed fashion the work-for-rent arrangement that she set up for him as a maintenance man at her property in 1981. This office finds, given the overall factual circumstances of this case, that this evidence is credible and probative. The record substantiates that the applicant had several family members already residing in the United States when he arrived in 1981. Thus, his testimony indicating that he had connections and people advising him in 1981 to help him find this position with an apartment manager who needed maintenance assistance is indirectly corroborated by the record. Moreover, given the applicant’s circumstances as one who did not have authorization to work, it is not surprising and in no way undermines the credibility of the applicant’s claims that the applicant’s employer did not provide the applicant a written contract to document this agreement dated in 1981, a copy of which he might then provide to CIS in 1990. Rather, in 1990, the applicant had to ask the apartment manager to document this work-for-rent arrangement for him after the fact. As such this office does not find the fact that the documents submitted to corroborate this work-for-rent arrangement are dated April 1990, rather than February 1981 and July 1984, undermines the credibility of these documents, as suggested by the director. [REDACTED] also provided for the record a statement on which she listed her own contact information and address at the same apartment building where she stated that she arranged to have the applicant, his younger brother and his wife live in 1984. Thus, the statement and the rental agreement and lease forms which she submitted are amenable to verification.

The notations which [REDACTED] included on the rental agreement and lease provide a reasonable explanation regarding why this work-for-rent arrangement was allowed. Her notations also demonstrate that [REDACTED]

is not completely fluent in English.⁶ Thus, the fact that she did not provide more formal, developed documentation of the work-contract that she arranged with the applicant does not undermine the probative value of this documentation. In addition, when filling in notations on these forms, [REDACTED] had to rely on memories which were seven to nine years old. Thus, the fact that some of her notations are imprecise also does not undermine the probative value of this documentation. For instance, she refers to the applicant's younger, dependent brother [REDACTED] as nine years old on the form which is meant to document the applicant's 1981-1983 residence and as being nine years old on the form which is meant to document the applicant's 1983-1985 residence. This seems an indication that on both of these forms, which [REDACTED] notated on the same day in 1990, she is estimating [REDACTED]'s age at the time of this work-for-rent arrangement generally, rather than an indication that she had made inconsistent statements.⁷

This office also finds [REDACTED]'s documentation is sufficient to overcome any minor inconsistencies in other documentation in the record, such as those in the affidavits of the applicant's uncle's friend, [REDACTED]. That is, [REDACTED] in one of his affidavits indicated that the applicant lived first on [REDACTED] and then moved to [REDACTED] an apartment building which was managed by the same person who had managed the building on [REDACTED]. However, the documents signed by [REDACTED] as well as the Form I-256A, the Form I-687 and the Form G-325A dated November 1991 indicate that the applicant lived first for a short time on [REDACTED] and then on [REDACTED] and that he continued to do maintenance work on [REDACTED] after moving to [REDACTED] as the apartments on [REDACTED] had the same manager as the apartments on [REDACTED]. This office also notes that [REDACTED] affidavits were written more than twenty years after 1981, whereas [REDACTED] notations, the Form I-687 and the Form I-256A were compiled closer in time to the relevant events, or nine to eleven years after 1981 and thus, as a general rule, may be seen as the more reliable evidence.

[REDACTED] specified a [REDACTED] move out date of July 14, 1983 on the rental agreement form and the information on the applicant's Form I-256A and Form G-325A provide information that is consistent with this. This office finds that the consistent information on these documents are sufficient to overcome the fact that when preparing the Form I-687 the tax preparer who prepared this form indicated that the applicant moved from [REDACTED] to [REDACTED] during February 1984, and that the applicant's address was on [REDACTED] Street, rather than on [REDACTED] as specified by [REDACTED]. In making this finding, this office would underscore that the applicant is not fluent in English, that he lived on [REDACTED] for only a brief time, which had passed almost a decade before the Form I-687 was completed, and the person who prepared the Form I-687 apparently may not have been fluent in English either.

⁶ It is also noted that the applicant is not fluent in English and that he had a tax preparer, rather than an immigration attorney or other person trained in immigration matters, to assist him in 1990 when he first gathered documentation in support of the Form I-687, including the documents signed by [REDACTED]. Further, the unusual spelling of common English words such as "prairie" as "paraire" and "interiors" as "interiors" on the Form I-687 may be an indication that the tax preparer who assisted the applicant, [REDACTED] was himself not completely fluent in English, either.

⁷ As noted earlier, The Form I-687 lists a December 1972 date of birth for the applicant's younger brother [REDACTED]. Thus, [REDACTED] would have been between eight and nine years old when the applicant began working for [REDACTED] in February, 1981.

Finally, [REDACTED] indicated in his statement written in 2005 that at times he had the applicant do carpet installation work for him when the applicant did not have other work. [REDACTED] indicated that this occurred during or between the years of 1980 and 1988, when he was a subcontractor for [REDACTED] a company owned by [REDACTED]. This office finds that this does not, as suggested by the director, undermine the credibility of the applicant's claim that he did not re-enter the United States until early 1981, after his exit in 1976. First, this office notes that this statement was submitted in response to the NOID, along with the statement of [REDACTED]. The NOID indicates that the director's one basis for denying the application related to the director's finding that [REDACTED] did not yet exist at the time that the applicant claimed to have been working on behalf of that company in the mid-eighties. Thus, the record indicates that [REDACTED] statement was submitted primarily to corroborate the statement of [REDACTED] operated in Texas from 1980 through 1989 as [REDACTED] did not specify in his statement that the applicant ever did work for him during 1980. He also did not indicate that the applicant helped him on a regular basis. Given the wording of the statement, the applicant may have only assisted [REDACTED] on a few occasions. [REDACTED] was relying on his memory of the irregular, part-time assistance of one person from approximately twenty to twenty-five years earlier. Finally, [REDACTED] provided an address and telephone number by which the director might have reached him for additional information or clarification if that was deemed necessary.

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.

It is found that the applicant has established continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988.

The applicant has been arrested and called into court on three occasions, and in two instances, he was convicted of a misdemeanor. Specifically, the applicant provided court documents which establish that on August 2, 2002, he was convicted of driving while intoxicated, misdemeanor class B, in County Criminal Court, Dallas County, Texas. He was ordered to serve 160 days in Dallas County Jail, to serve 16 months probation and to pay a fine of \$800. The court documents in the record also establish that the applicant successfully completed all that the court required of him and on January 9, 2004, the County Criminal Court, Dallas County, Texas discharged this case.

Court documents provided by the applicant and printouts from electronic criminal records databases available to this office when read together substantiate that on July 20, 2006, the Navarro County Court, Navarro County, Texas determined that it would process as a deferred adjudication charges brought against the applicant of misdemeanor, driving while license invalid, as defined at the State of Texas Transportation Code § 521.457.⁸ On October 23, 2006, this deferred adjudication was set aside as the applicant had completed the

⁸ The State of Texas criminal history electronic records available to the AAO provided the exact section of the Texas Transportation Code under which the applicant was charged and specified that this offense is a misdemeanor, "class unknown." The court documents issued by the County Court of Navarro County, Texas and submitted into the record did not list the precise section of the law under which the applicant was

terms of the deferment. Deferred adjudications are convictions under the Act, as amended. *See Matter of Punu* 22 I&N Dec. 224, 227 (BIA 1998). *See also* § 101(a)(48)(A) of the Act. Thus, this constitutes the applicant's second misdemeanor conviction.

Finally, court documents in the record indicate that on August 1, 2007, the County Criminal Court, Dallas County, Texas, held that the applicant was *not guilty* of a charge of driving while intoxicated, 2nd offense, misdemeanor class A, which had been brought against him.

Two misdemeanor convictions do not make the applicant ineligible for benefits under the LIFE Act. *See* 8 C.F.R. § 245a.18(a)(1). This office also notes that in Texas the misdemeanor class B offense of driving while intoxicated as well as the misdemeanor offense of driving while one's license is suspended or invalid are not crimes involving moral turpitude. *See Lopez v. State*, 990 S.W. 2d 770, 778 (Tex. App. – Austin 1999).

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

charged, nor the category of the offense. Rather, the court documents referred to the offense using the abbreviated code: DWLI.