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FILE:



Office: ORLANDO, FLORIDA

Date: **MAR 28 2008**

consolidated herein]  
MSC 02 246 66291

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 [or Records] 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 in Orlando, Florida. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, resided continuously in the United States in an unlawful status from that date through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1998.

On appeal, the applicant submits some additional documentation and requests that his case be reviewed.

To be eligible for adjustment to permanent resident status under the LIFE Act an applicant must establish his or her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and 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.”

“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.” 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.” 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 the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and its amenability to verification. See 8 C.F.R. § 245a.12(e).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm.

1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant, a native of Mexico, filed his application for permanent resident status under the LIFE Act (Form I-485) on June 3, 2002.

In a Notice of Intent to Deny (NOID), issued on November 10, 2005, the director noted the inconsistency in the applicant’s testimony at his LIFE legalization interview on February 8, 2005, and an earlier interview on January 21, 1992, in connection with his application for class membership in the *Catholic Social Services (CSS) v. INS* class action litigation,<sup>1</sup> with respect to his initial date of entry into the United States and his subsequent absence(s) from the country. At his earlier interview, the director pointed out, the applicant stated that he made two trips outside the country – from December 1985 to March 1986 and from January to April 1988 – whose duration exceeded the 45-day maximum prescribed in 8 C.F.R. § 245a.15(c)(1). The director also cited the applicant’s statement at his interview in 2005 that he first entered the United States on January 7, 1982. The evidence of record, therefore, did not establish the applicant’s entry into the United States before January 1, 1982, or his continuous residence in the United States in an unlawful status through May 4, 1988, as required for him to be eligible for permanent resident

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<sup>1</sup> *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993).

status under the LIFE Act. The director granted the applicant 30 days to submit additional evidence.

In response to the NOID the applicant asserted that the testimony he provided at his first interview for CSS class membership in 1992 was erroneous due to his poor command of English. In accordance with his testimony at the second interview for LIFE legalization in 2005, the applicant asserted that he was absent from the United States on two occasions during the 1980s – from December 27, 1985 to January 10, 1986 (for his marriage in Mexico), and from January 30 to March 10, 1988 (to visit his ailing father and attend the birth of his daughter in Mexico). Since neither of these absences exceeded 45 days in length, the applicant asserts that they did not interrupt his continuous unlawful residence in the United States. The applicant did not address the date of his first entry into the United States, which he stated in his 2005 interview was January 7, 1982. The applicant submitted some additional documentation in response to the NOID, but none of it dated earlier than 1993.

On December 22, 2005, the director denied the application on the grounds that the evidence of record failed to establish that the applicant entered the United States before January 1, 1982, that he maintained continuous unlawful residence in the United States through May 4, 1988, and that he maintained continuous physical presence in the United States from November 6, 1986 through May 4, 1988. The director noted the applicant's failure to establish that the trips he took to Mexico during the 1980s were sufficiently short in duration that they would not be deemed to have interrupted the applicant's continuous residence and continuous physical presence in the United States.

On appeal the applicant submits some additional documentation, none of which dates earlier than 1987, and requests that his case be reviewed. The AAO has reviewed the application, and concludes that the applicant has not overcome the grounds for denial.

At his initial interview in 1992, as well as in his accompanying documentation (including an application for temporary resident status (Form I-687) and a "Form for Determination of Class Membership in CSS v. Meese") the applicant stated that he was absent from the United States on trips to Mexico from December 28, 1985 to March 15, 1986 (a total of 77 days) and from January 30 to April 15, 1988 (a total of 76 days). Both of these absences exceeded the 45-day maximum prescribed in 8 C.F.R. § 245a.15(c)(1), and the applicant has presented no evidence that "emergent reasons" within the meaning of the regulation prevented an earlier return to the United States on either occasion.<sup>2</sup> At his LIFE legalization interview in 2005, however, the applicant changed the return dates of his trips to Mexico, stating that he returned from the first on January 10, 1986 (concluding a 14-day visit) and from the second on March 12, 1988 (concluding a 42-day visit). No documentary evidence has been submitted in support of either

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<sup>2</sup> While the term "emergent reasons" is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that *emergent* means "coming unexpectedly into being."

date. The applicant also stated at his LIFE legalization interview that he first entered the United States without inspection on January 7, 1982,<sup>3</sup> which is after the requisite date before which continuous unlawful residence must have begun (January 1, 1982) to qualify for legalization under the LIFE Act. No documentation has been submitted by the applicant to show when he first entered the United States. The evidence in the record, however, does not show that the applicant was ever in the United States before 1987.

Based on the foregoing discussion, the AAO concurs with the director's decision that the applicant has failed to establish that he entered the United States unlawfully before January 1, 1982, that he resided continuously in the United States in an unlawful status through May 4, 1988, and that he was continuously physically present in the United States from November 6, 1986 through May 4, 1988, as required under section 1104(c)(2)(B)(i) and (C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (B). Accordingly, the applicant is ineligible for permanent resident status under section 1104 of 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.

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<sup>3</sup> In the documentation submitted in connection with his CSS class membership application in December 1991 the applicant stated that he first entered the United States without inspection in December 1981.