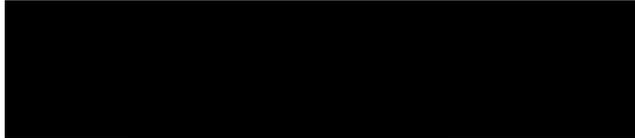


**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



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

PUBLIC COPY



LR

FILE:

MSC 03 186 61027

Office: LOS ANGELES

Date:

MAY 22 2008

IN RE: Applicant:



APPLICATION:

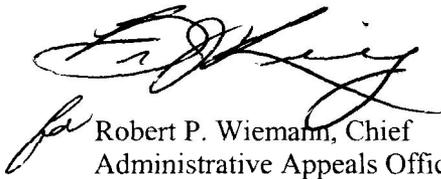
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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 (director) in Los Angeles, California. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, the applicant asserts that he has lived in the United States since 1981, and submits some additional documentation in support of that claim.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

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 born on February 5, 1970, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on April 4, 2003. At that time the only evidence in the record of the applicant's residence in the United States during the 1980s was a series of five affidavits from residents of Anaheim and Riverside, California, that were submitted by the applicant in 1993 in connection with his application for status as a temporary resident (Form I-687) and his application for class membership in the *CSS v. Meese* class action lawsuit.¹ The affidavits, all dated June 11, 1993, were submitted by:

- [REDACTED] the applicant's brother, who stated that the applicant had resided in the United States since December 1981.
- [REDACTED] who stated that the applicant had been a friend of his since December 1981 and that the applicant visited his parents in Mexico from October 8 to November 2, 1987.
- [REDACTED] who stated that the applicant resided at [REDACTED] in Anaheim from December 1981 to October 1988.
- [REDACTED], who stated that the applicant had resided in the United States since December 1981 and that the applicant was self-employed, doing different kinds of work and receiving payment in cash, from November 1983 to October 1988.
- [REDACTED] who stated that she met the applicant at a bus station through a mutual friend in December 1981, and that the applicant had resided in Anaheim, California since December 1981.

On March 30, 2006, the director issued a Notice of Intent to Deny (NOID), indicating that the evidence of record was insufficient to establish the applicant's continuous unlawful residence in the United States from January 1, 1982 through May 4, 1988. The director noted that the affidavits in the record conflicted in some respects with the applicant's testimony at his legalization interview on December 15, 1993. The applicant was granted 30 days to submit additional evidence.

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

In response to the NOID the applicant stated that he did not have any primary documentation to prove his residence in the United States during the 1980s, but claimed that he lived with his brother, [REDACTED] from December 1981 to October 1988. The applicant submitted one additional affidavit from [REDACTED] resident [REDACTED], dated April 24, 2006, stating that the applicant had resided in the United States since December 2, 1981, and that the applicant had been a self-employed “handyman” from November 1983 to October 1988.

In a decision dated June 26, 2006, the director determined that the additional affidavit did not overcome the grounds for denial, and denied the application for the reasons discussed in the NOID.

On appeal, the applicant reiterates his claim to have lived in the United States since December 1981, and submits yet another affidavit from [REDACTED] a resident of Norwalk, California, dated July 11, 2006, stating that she met the applicant through a mutual friend in December 1981 and that the applicant has resided in the United States since then.

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

The applicant has no contemporary documentation from the 1980s demonstrating that he was residing in the United States at that time, and the affidavits in the record provide little detailed information about the applicant from the end of 1981 to 1988. Most of the affiants did not indicate where the applicant was living during those years, or where he worked. While most of the affiants claim to have known the applicant in the United States since late 1981, only one described how they met and none provided any significant details about the nature and extent of their interaction with him during the 12 to 25 years after that (when they prepared their affidavits), or about the affiant’s life in the United States generally. None of the affiants submitted any supporting documentation of their relationship to the applicant during the 1980s – such as photographs, letters, or other documents. Considering the paucity of information in the affidavits, they do not represent persuasive evidence of the applicant’s continuous residence in the United States during the requisite period for LIFE legalization.

Given the lack of probative evidence in the record, the AAO determines that the applicant has failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act. The appeal will be dismissed, and the application denied.

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