

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

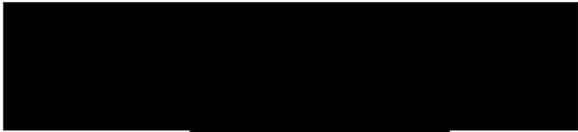
**PUBLIC COPY**

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

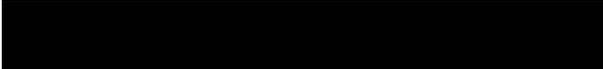
L2



FILE:   
MSC 02 236 62810

Office: DENVER, COLORADO

Date: **MAY 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been forwarded to the Citizenship and Immigration Services National 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and you will be contacted.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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), Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director concluded that the applicant had established continuous residence in the United States from 1986 through the end of the statutory period. However, the director found that the affidavits submitted to demonstrate residence in the United States from January 1982 through 1986 were not sufficient to establish continuous residence. The director did not indicate whether he had found discrepancies in the affidavits or other evidence. The director also found that at the June 29, 2004 and January 18, 2005 LIFE legalization interviews, the applicant failed to establish that he possessed the basic citizenship skills required under the LIFE Act. For both of these reasons, the director denied the application.

On appeal, counsel asserted that the record did include evidence that established that the applicant had resided continuously in the United States in an unlawful status throughout the entire statutory period. She also asserted that the applicant's previous representative had provided the applicant with misinformation regarding how to establish that he possessed the basic citizenship skills required under the LIFE Act. In addition, she indicated that Citizenship and Immigration Service (CIS) had denied the applicant's due process rights by failing to inform him that he had the option of either displaying basic citizenship skills or providing proof of attendance in a citizenship skills course. Counsel provided evidence that on September 28, 2004 the applicant began attending the Lake Middle School English as a Second Language program for Adults. Counsel also submitted evidence of the applicant's continuous residence in the United States during the statutory period.

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.<sup>1</sup>

Under section 1104(c)(2)(E)(i) of the LIFE Act, regarding basic citizenship skills, an applicant for permanent resident status must demonstrate that he or she:

- (I) meets the requirements of section 312(a) of the Immigration and Nationality Act (8 U.S.C. 1423(a))(relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or
- (II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

---

<sup>1</sup> 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).

Under section 1104(c)(2)(E)(ii) of the LIFE Act, the Attorney General may waive all or part of the above requirements for aliens who are at least 65 years of age or who are developmentally disabled. *See also* 8 C.F.R. § 245a.17(c).

An applicant may establish that he or she has met the requirements of section 312(a) of the Immigration and Nationality Act (Act) by demonstrating an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language and by demonstrating a knowledge and understanding of the fundamentals of the history and of the principles and form of government of the United States. *See* 8 C.F.R. § 245a.17(a)(1) and 8 C.F.R. §§ 312.1 and 312.2.

An applicant may also establish that he or she has met the requirements of section 312(a) of the Act by providing a high school diploma or general educational development diploma (GED) from a school in the United States. *See* 8 C.F.R. § 245a.17(a)(2).

Finally, an applicant may establish that he or she has met the requirements of section 312(a) of the Act by providing evidence that he or she has attended or is attending a state recognized, accredited learning institution in the United States, following a course of study which spans one academic year and that includes 40 hours of instruction in English and United States history and government. The applicant may provide documentation of such on the letterhead stationery of said institution prior to or during the LIFE interview. *See* 8 C.F.R. § 245a.17(a)(3).

The applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the initial LIFE interview shall be afforded a second opportunity after 6 months: to pass the tests; to submit evidence of a high school diploma or GED from a school in the United States; or to submit evidence that he or she has attended or is attending a state-recognized, accredited learning institution in the United States, following a course of study which spans an academic year and that includes 40 hours of instruction in English and United States history and government. *See* 8 C.F.R. § 245a.17(b).

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* LIFE Act § 1104(c)(2)(B) 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).

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 application and other statements of the applicant, both oral and written, are evidence to be considered. *See Matter of E-M-*, 20 I&N Dec. 77 at 79. The applicant's statements must not be the applicant's only evidence used to establish eligibility, but they should be viewed as valid evidence. *Id.*

The absence of contemporaneous evidence is not necessarily fatal to the applicant's claim of continuous residence in the United States during the statutory period. *See Id.* at 82-83. Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence. *See Id.*

Documentary evidence may be in the format prescribed by CIS regulations. *See Id.* at 80. For example, 8 C.F.R. § 245a.2(d)(3)(i) states that a letter from an employer should be signed by the employer under penalty of perjury and "state the employer's willingness to come forward and give testimony if requested." *Id.* Letters from employers that do not comply with such requirements do not have to be accorded as much weight as letters that do comply. *Id.* However, even if not in compliance with this regulation, a letter from an employer should be considered as a "relevant document" under 8 C.F.R. § 245a.2(d)(3)(iv)(L). *Id.* Also, affidavits that have been properly attested to may be given more weight than a letter or statement. *Id.* Nonetheless in determining the weight of a statement, it should be examined first to determine upon what basis it was made and whether the statement is internally consistent, plausible and credible. *Id.* What is most important is whether the statement is consistent with the other evidence in the record. *Id.*

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. *Id.* at 79-80. 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 or 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 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, to deny the application or petition.

On or near May 18, 1993, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On May 24, 2002, he filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

On April 15, 2005, the director issued a notice of intent to deny (NOID) in which he indicated that he intended to deny the application because the applicant had not established that he resided continuously in the United States during the statutory period.

Specifically, the director indicated that the affidavits of family members were not sufficient to establish continuous residence in the United States. This point in the NOID is withdrawn. CIS must consider the affidavits of family members and determine the extent of their probative value. That is, first, an applicant is not required to present contemporaneous evidence of continuous residence. *See Matter of E-M-*, 20 I&N Dec. 77 at 82-83. Second, affidavits, including the affidavits of family members, which are consistent and verifiable may be sufficient to demonstrate continuous residence. *See Id.* Affidavits that have been properly

attested to may be given more weight than a letter or statement. *Id.* Yet, when determining the weight of a statement, it should be examined first to determine upon what basis it was made and whether the statement is internally consistent, plausible and credible. *Id.* What is most important is whether the statement is consistent with the other evidence in the record. *Id.*

The affidavits provided are analyzed later in this decision.

On October 11, 2005, the director issued a Decision on Application for Status as Permanent Resident in which he denied the application based on a finding that the applicant had not established that he possesses basic citizenship skills as required under the LIFE Act, and he had not established continuous residence in the United States during the portion of the statutory period that occurred before 1986.

The director also indicated that he was denying the application because the applicant had not established that he was *physically present* in the United States during 1982 through 1986. This point in the denial is withdrawn. 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 some date before January 1, 1982 through May 4, 1988, and continuous physical presence in the United States from November 6, 1986 through May 4, 1988. The applicant need not provide evidence of continuous physical presence prior to November 6, 1986 to establish eligibility under the LIFE Act.

In addition, the director indicated that the evidence which the applicant submitted after his second LIFE legalization interview and in response to the NOID would not be accepted because he had been asked to bring to the second LIFE legalization interview any relevant evidence of continuous residence which he had available. This point in the October 11, 2005 decision is withdrawn. In the NOID, the director informed the applicant that he had found that the affidavits which the applicant submitted to establish his continuous residence in the United States during January 1982 through January 1986 were not sufficient to establish this claim. Thus, in a timely response to the NOID, the applicant provided additional affidavits and statements that he had gathered regarding his continuous residence in the United States during that period. CIS must consider this evidence. Further, CIS shall draw no negative inference from the fact that the applicant gathered additional evidence after being informed that the evidence of record was insufficient to support his claim.

On November 14, 2005, the Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO), in this matter was received by the District Office, Denver, Colorado. On the Form I-290B, counsel indicated that she would file a brief or additional evidence *within thirty days of receiving a copy of the record of proceedings*. The record indicates that CIS never received such a submission. On February 15, 2008, this office sent counsel a facsimile transmission inquiring whether she had sent a brief or additional evidence, and requesting that a copy of such brief be sent by facsimile or mail to the AAO within five business days. To date, this office has received no response. Thus, the AAO will analyze this matter based on the evidence in the record.

On appeal, counsel asserted that the record did include evidence which established that the applicant had resided continuously in the United States in an unlawful status during the statutory period. She also asserted that previous counsel had misinformed the applicant regarding how he might establish that he possesses basic citizenship skills. She also indicated that CIS had an obligation to inform the applicant that in lieu of passing the three part basic citizenship skills examination, he was permitted to provide evidence of attending the appropriate English and U.S. history and government class, and that CIS had failed to meet that obligation.

Counsel also submitted additional evidence of the applicant's continuous residence in the United States during the statutory period.

First, the regulations provide that the applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the initial LIFE interview shall be afforded a second opportunity after 6 months: to pass the tests; to submit evidence of a high school diploma or GED from a school in the United States; or to submit evidence that he or she has attended or is attending a state-recognized, accredited learning institution in the United States, following a course of study which spans an academic year and that includes 40 hours of instruction in English and United States history and government. *See* 8 C.F.R. § 245a.17(b). The director is not under any obligation to educate applicants regarding the requirements and alternate requirements listed in published regulations, contrary to assertions made on appeal. The director is obliged to provide an applicant with two opportunities to pass the basic citizenship examination, which the director did in this case.

The record establishes that the applicant did not pass the basic citizenship skills examination on June 29, 2004 and on January 18, 2005.

Further, the regulations specify that to fulfill the LIFE Act requirements relating to a minimal understanding of English and an understanding of U.S. history and government by attending certain state-accredited programs, the applicant must enroll in the program and provide documentation of having done so to CIS prior to or during the second LIFE interview. *See* 8 C.F.R. § 245a.17(b). The record does not establish that the applicant enrolled in a course of study that met the regulatory requirements described at 8 C.F.R. § 245a.17(a)(3) prior to the January 18, 2005 second LIFE legalization interview, nor did the applicant provide evidence of such prior to or during that interview.

The AAO would underscore that even if the documentary evidence in the record, which attempts to establish that the applicant had enrolled in the appropriate accredited program prior to the second LIFE legalization interview, would have been provided before or during that interview, this evidence is not sufficient. To meet the regulatory requirements, such evidence must state that an applicant has attended or is attending a state recognized, accredited learning institution in the United States, following a course of study which spans one academic year and which includes 40 hours of instruction in English *and United States history and government*. An applicant may provide documentation of such on the letterhead stationery of said institution prior to or during the LIFE interview. *See* 8 C.F.R. § 245a.17(a)(3). The evidence which the applicant submitted does not meet these requirements. For example, the Lake Middle School letter which the applicant submitted gives no indication that the course of study which he was following includes instruction in U.S. history and government.

The regulations also state that to fulfill the LIFE Act requirements relating to basic citizenship skills an applicant may provide his or her high school diploma or GED from a school in the United States. *See* 8 C.F.R. § 245a.17(a)(2). The applicant has not provided a high school diploma or GED from a school in the United States.

The applicant is not 65 years old or older and is not developmentally disabled. Thus, he does not qualify for either of the exceptions listed in section 1104(c)(2)(E)(ii) of the LIFE Act.

The applicant has failed to demonstrate that he has met the basic citizenship skills requirement as described at 1104(c)(2)(E) of the LIFE Act. Thus, he is not eligible to adjust to permanent resident status under section 1104 of the LIFE Act.

The AAO would emphasize, however, that where the director finds the applicant ineligible for permanent resident status under section 1104 of the LIFE Act, the director must then consider the applicant's eligibility for adjustment of status to that of a temporary resident pursuant to the regulation at 8 C.F.R. § 245a.6, which provides, in pertinent part:

If the district director finds that an eligible alien as defined at § 245a.10 has not established eligibility under section 1104 of the LIFE Act (part 245a, Subpart B), the district director *shall* consider whether the eligible alien has established eligibility for adjustment to temporary resident status under section 245A of the Act, as in effect before enactment of section 1104 of the LIFE Act (part 245a, Subpart A).

(Emphasis added).

Regarding this, the AAO would note that when applying for temporary resident status under the *Immigration Reform and Control Act of 1986*, the applicant was not required to demonstrate a basic knowledge of English and U.S. history and government. It is only after such applicant has qualified as a temporary resident and is attempting to adjust to *permanent* resident status that he or she must fulfill requirements relating to English and U.S. history and government. See 8 C.F.R. § 245a.3(b)(4)(i)(A).

However, the applicant's failure to demonstrate that he possesses the basic citizenship skills required under the LIFE Act was not the director's only basis for denying the application. In the Notice of Intent to Dismiss issued by the AAO on April 15, 2008, this office explained that this matter would be remanded on that issue only if the applicant was able to overcome the adverse evidence in the record relating to his claim that he resided continuously in this country throughout the statutory period.

First, in the April 15, 2008 Notice of Intent to Dismiss, this office again noted that the director found that the applicant had established continuous residence in the United States from January 1, 1986 through the end of the statutory period. In the notice, the AAO stated that it concurred with the director's finding. Thus, at issue in this proceeding is whether the applicant is able to establish that he resided continuously in the United States from some date prior to January 1, 1982 through January 1, 1986.

The record includes the following adverse or inconsistent evidence regarding this point.

1. The Form I-687 signed by the applicant on May 18, 1993. On this form, the applicant stated at item 16 that he first entered the United States on September 8, 1981. It is noted that he was 13 years old during September 1981.
2. The Form I-687 on which the applicant stated at item 33 that his first address in the United States was [REDACTED] Alhambra, California, and that he lived at this address from August 1981 through November 1986.
3. The affidavit of [REDACTED] dated July 28, 2004 on which the affiant attested that she is the applicant's brother's mother-in-law and that the applicant lived with her family beginning in September 1981. She also attested that at that time, she lived at [REDACTED] and [REDACTED] Alhambra, California, but that she moved to [REDACTED]

Alhambra, California and that the applicant moved with her and her family. She did not specify when she moved to [REDACTED] but she did indicate that the applicant lived with her family until September 1986. Thus, the applicant would have had to have lived at [REDACTED] in Alhambra for some period of time prior to September 1986.

4. The affidavit of [REDACTED]<sup>2</sup> dated May 19, 1993 on which the affiant attested that she had personal knowledge that the applicant resided in Los Angeles, California from September 1981 through the date that affidavit was signed.<sup>3</sup> She attested that the applicant lived with her from 1981 through 1986. She also indicated that on May 19, 1993, the date that she signed that form, she lived at [REDACTED] Alhambra, California.

During 2004, [REDACTED] attested that beginning in September 1981, the applicant lived at her home at [REDACTED] Alhambra, California. On an unspecified date after that, she moved to 605 Washington in Alhambra, California and the applicant moved with her, according to her affidavit. She indicated that the applicant lived with her at that address until September 1986. Yet, on the Form I-687 at item 33, the applicant stated that from August 1981 through November 1986, he resided at [REDACTED] Alhambra, California.<sup>4</sup>

This discrepancy casts doubt on the authenticity of the applicant's claim that he resided at the same address from 1981 through 1986. It casts doubt on Florida Majercik's statements and on the authenticity of the rest of the evidence of record. This in turn casts doubt on the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988.

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 application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such

---

<sup>2</sup> In the typed section of this document, the affiant's family name is spelled [REDACTED]. However, when signing her name, the affiant clearly spelled her family name [REDACTED] and the signature is the same as that found on the affidavit dated July 28, 2004. Thus, this office finds it more likely than not that the correct spelling of this family name is [REDACTED].

<sup>3</sup> On the Form I-687, the applicant stated that from 1981 through the date that form was signed, he resided first in Alhambra, California, then in Alta Dena, California and then in Pasadena, California. This office notes that Alhambra, Alta Dena and Pasadena are all part of metro-Los Angeles, and as such the fact that the affiant [REDACTED] attested that the applicant resided in Los Angeles, California during this period does not represent an inconsistency.

<sup>4</sup> The AAO finds that the small discrepancies in the record related to when the applicant began living in Alhambra and when he moved away from Alhambra are not material. That is, [REDACTED]'s 2004 affidavit indicates that he lived in Alhambra from September 1981 through September 1986, and the Form I-687 indicates that he lived in Alhambra from August 1981 through November 1986. On the other hand, the discrepancy which relates to whether the applicant lived at one address the entire time that he resided in Alhambra, or whether he moved from [REDACTED] in Alhambra to [REDACTED] in Alhambra is material.

inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Such inconsistencies in the record may only be overcome through independent, objective evidence of the applicant's claim that he resided continuously in the United States throughout the statutory period. The applicant has failed to provide contemporaneous evidence that might be considered independent, objective evidence of his having resided in the United States during the portion of the statutory period which occurred prior to January 1, 1986. In particular, this office notes that the applicant has failed to provide evidence of having attended school in the United States or having been immunized such that he might be permitted to attend school in the United States. Yet, according to the record, the applicant was only 13 years old at the time that he claims to have begun residing in Alhambra, California, and as such would have been required by law to enroll in school in Alhambra.

This office also finds that the various statements and affidavits currently in the record which purport to substantiate the applicant's residence in the United States from a date prior to January 1, 1982 through January 1, 1986 are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States during the initial portion of the statutory period.

The applicant has failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988. Thus, the applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

In the April 15, 2008 Notice of Intent to Dismiss, the applicant was provided 30 days (plus 3 days for mailing) to contest these findings. He was informed in that notice that if he did not submit such evidence within the allotted period, the AAO would dismiss his appeal. To date, this office has received no rebuttal from the applicant.

The applicant failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988. The applicant also failed to establish that he possessed the basic citizenship skills required under section 1104(c)(2)(E)(i) of the LIFE Act.

The applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act for the reasons stated above, with each considered as an independent and alternative basis for denial.

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