

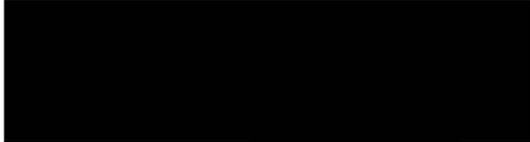
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U.S. Department of Homeland Security  
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U.S. Citizenship  
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FILE: [REDACTED]  
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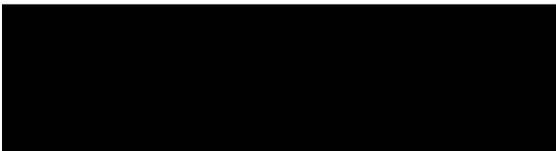
Office: HOUSTON

Date: OCT 03 2008

IN RE: Applicant: [REDACTED]

PETITION: 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 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.

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 Director, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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

On appeal, counsel for the applicant submits a brief.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish his continuous unlawful residence in the United States from before January 1, 1982, through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986, through May 4, 1998.

“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.

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 regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” *Black’s Law Dictionary* 1064 (5<sup>th</sup> ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

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.

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 filed a Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on May 7, 2003. On January 13, 2006, in an interview required in connection with his application, with his attorney of record present, the applicant stated that he had initially entered the United States without inspection on September 1, 1981, and had departed the United States in order to get married in Mexico for two months from on or before December 22, 1985, to the end of February 1986. The record of interview was signed by both the applicant and his attorney of record.

On May 23, 2006, the director denied the application. The applicant, through counsel, filed a timely appeal from that decision on June 23, 2006.

On appeal, counsel asserts that the applicant remembers telling the interviewing officer that he departed the United States for only two weeks to get married – not two months – stressing the fact that he could not stay in Mexico for a long time because of his employment in the United States.

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.

A review of the record reveals that with regard to his absence from, and employment in, the United States during the requisite time period, the applicant provided: (1) an undated letter from [REDACTED] of [REDACTED] Automatic Transmission in Houston, Texas, stating that the applicant was employed as a mechanic from February 12, 1984, to December 6, 1989; (2) an undated letter from [REDACTED] of Baytown, Texas, stating, in part, that he had known the applicant since 1983, the applicant did some work for him in his home and painted the exterior of his house in 1984, the applicant

would travel to Mexico for two week visits, and that the applicant "...went to Mexico in December 1985 he left until mid January 1986 reason being that he was getting married..." and, (3) a letter from [REDACTED] and [REDACTED], dated June 14, 2006, stating that they met the applicant in mid-1984 and recall that he made a trip to Mexico in December 1985 and returned in mid-January 1986 to resume his regular job. With regard to his continuous residence in the United States since prior to January 1, 1982 through May 4, 1988, the applicant provided: (4) an affidavit from his brother stating that the applicant had come to the United States from Mexico in September 1981, and (5) four fill-in-the-blank affidavits from friends attesting to the applicant's presence in the United States since in or after May 1984.

The affidavits provided by the applicant's brother and acquaintances were not accompanied by proof of identification or any evidence that the affiants actually resided in the United States during the relevant period. The affiants were generally vague as to how they dated their acquaintances with the applicant, how often and under what circumstances they had contact with the applicant during the requisite period, and lacked details that would lend credibility to their claims. As such, they can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period. Furthermore, the employment letter from Mr. [REDACTED] does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i). Mr. [REDACTED] does not provide the applicant's address at the time 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.

Although the applicant now claims to have departed the United States for only two weeks from December 1985 to mid January 1986, there is no evidence contained in the record that the applicant was at work during the period from on or before December 22, 1985, to the end of February 1986 – the time period during which he claimed at interview to have been absent from the United States.

While not directly dealt with in the director's decision, there must be a determination as to whether the applicant's absence from the U.S. for more than 45 days was due to "emergent reasons." Although this term is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means "coming unexpectedly into being."

The applicant has stated that the purpose of his trip to Mexico in December 1985, was to get married. At no point has the applicant put forth any reason or any valid basis for his extended departure from prior to his marriage in Mexico on December 22, 1985, to the end of February 1986, or any evidence of his intent to return to the United States within 45 days of his departure. Accordingly, in the absence of evidence that the applicant intended to return within 45 days, it cannot be concluded that emergent reasons "which came suddenly into being" delayed or prevented the applicant's return to the United States beyond his more than 45-day period of absence.

The AAO finds that the applicant has failed to establish, by a preponderance of the evidence, 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. Given this, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

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