

~~data deleted to~~
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2



FILE: [REDACTED]
MSC 02 247 67563

Office: LOS ANGELES

Date: SEP 02 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: 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.

A handwritten signature in black ink, appearing to read "Robert P. 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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district 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 by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel submits a brief statement.

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. The pertinent statutory provision reads as follows:

Section 1104(c)(2)(B)(i). In general – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act that were most recently in effect before the date of the enactment of this Act shall apply.

“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. Although the term “emergent reason” is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means “coming unexpectedly into being.”

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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant’s own testimony. 8 C.F.R. § 245a.13(f). Affidavits indicating specific, personal knowledge of the applicant’s whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

In or about August 1993, the applicant submitted a Form I-687, Application for Status as a Temporary Resident. On that application, the applicant indicated that he had entered the United States without inspection on October 1, 1987, and had departed the United States to travel to Mexico on only three occasions: from February 28, 1985, to March 20, 1985, to visit family; from November 18, 1986, to December 2, 1986, to visit family; and, from September 10, 1987, to October 1, 1987, for a family emergency.

The applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under the LIFE Act on June 4, 2002. On February 6, 2006, the applicant was interviewed in connection with his application. At that time he provided a sworn statement before an officer of Citizenship and Immigration Services (CIS), stating that he first entered the United States in 1981, returned to Mexico in 1982 to get married, and in 1984 went to Mexico for eight months – returning to California in 1985.

On February 23, 2006, the district director issued a Notice of Intent to Deny (NOID) the application because the applicant had failed to submit documentation to establish his continuous unlawful status in the United States from before January 1, 1982, through May 4, 1988. The district director also noted that the applicant had not established continuous residence due to his absence from the United States for eight months in 1984/1985. On April 15, 2006, the district director denied the application on the basis of the reasons stated in the NOID.

On appeal, the applicant asserts that he did not have a single absence from the United States that exceeded 45 days or 180 days in the aggregate. The applicant also asserts that he has submitted documentation showing he entered the United States prior to January 1, 1981, and believes he was intimidated by CIS officials in that he did not remember the exact dates and mistakenly made wrong statements, retracts those statements, and stands by the dates listed on his Form I-485.

The issue in this proceeding is whether the applicant has established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988.

A review of the record reveals that the applicant has provided the following evidence throughout the application process in an attempt to demonstrate his entry into the United States before January 1, 1982, and his continuous residence in an unlawful status since that date through May 4, 1988:

1. An affidavit (the date is illegible), from [REDACTED] of Houston, Texas, stating that she had known the applicant since 1981 and that he resided at an unspecified address in Houston until 1986, went to California, and presently lives at [REDACTED], Santa Ana, California.
2. An affidavit, dated July 23, 1993, from [REDACTED] who identifies himself as the owner of a rental unit located at [REDACTED] Santa Ana, California, stating that the applicant lived with him and his family from November 1986 to the date of signing the affidavit.
3. Similar fill-in-the-blank affidavits from: [REDACTED] of Santa Ana, California, dated July 28, 1993, stating that he met the applicant at a "fut bol [sic]" game in November 1986 and has personal knowledge that the applicant resided at an unspecified address in Santa Ana since November 1986; [REDACTED] of Santa Ana, California, stating that he met the applicant at a birthday party (on an unspecified date) and has personal knowledge that the applicant resided at an unspecified address in Santa Ana since November 1986; [REDACTED] of Santa Ana, California, dated July 22, 1992, stating that the applicant is his brother-in-law and that the applicant came to the United States in 1980 – first staying in Houston, Texas, and later moving to Santa Ana, California, in 1986; [REDACTED] of Santa Ana, California, dated August 5, 1993, stating that she met the applicant when he moved to California because he was a neighbor and lived next door to her and he has personal knowledge that the applicant resided at an unspecified address in Santa Ana since November 1986.

None of the affidavits in Nos. 1, 2, and 3, above, are accompanied by proof of identification or any evidence that the affiants actually resided in the United States during the relevant period. The affiants are generally vague as to how they date their acquaintances with the applicant, how often and under what circumstances they had contact with the applicant during the requisite period, and the affidavits lack details that would lend credibility to the affiants' claims. It is unclear as to what

basis the affiants claim to have direct and personal knowledge of the events and circumstances of the applicant's residence in the United States. As such, the statements can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv). The applicant also has not provided any documentation, such as money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, or automobile contract, and insurance documentation, etc. according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K). The documentation provided by the applicant consists solely of third-party affidavits ("other relevant documentation"). As previously discussed, these documents lack specific details as to how the affiants knew the applicant – how often and under what circumstances they had contact with the applicant – during the requisite time period from 1982 through 1988.

Furthermore, there are discrepancies noted in the documentation submitted by the applicant on his Form I-687, Form I-485, and testimony provided in connection with the Form I-485, as noted above. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988). The applicant's statements on appeal, retracting his testimony at interview, are not sufficient to explain the discrepancies noted without independent objective evidence.

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 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the insufficiency in the evidence provided, the AAO determines that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

The applicant has failed to establish that he maintained continuous unlawful residence the in the United States during the period from prior to 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.

It is further noted that the record reflects that the applicant was convicted of spousal abuse, in violation of section 273.5 of the California Penal Code on March 24, 1998, for which he received a sentence of 30 days in jail and three years informal probation.

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