

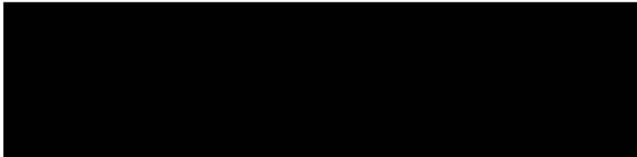
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

L2



FILE: [Redacted]  
MSC 03 239 62262

Office: DALLAS

Date: **MAY 20 2008**

IN RE: Applicant: [Redacted]

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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Dallas, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The district director denied the application because the applicant failed to establish that it was more likely than not that he entered the United States prior to January 1, 1982.

On appeal, counsel for the applicant asserts that the discrepancies in the recollection of dates and addresses by the applicant should not have a negative effect on his credibility because he is hearing impaired. Counsel further asserts that the applicant signs in English but that his family speaks Spanish and that the applicant relies on his family and church friends regarding his dates of entry to the United States and addresses prior to the date his formal education began.

Section 1104(c)(2)(B) of the LIFE Act states:

(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 (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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(c).

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 or 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 record reflects that on May 27, 2003, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On November 20, 2003, the applicant appeared for an interview based on his application.

On August 30, 2005, the interviewing officer sent the applicant a Notice of Intent to Deny (NOID) the Form I-485. The officer stated that all of the applicant's records indicated that he entered the United States after January 1, 1982. The officer stated that the file contained some obvious discrepancies in the time that the applicant claimed he entered the United States and the time others claimed he entered. The officer noted that an original letter from Pleasant Grove Baptist Church dated June 15, 1988, stated that the applicant had been attending there since 1983. The officer also noted that none of the churches or individuals specifying dates provided records of those specific dates. The officer informed the applicant that he had 30 days from the receipt of the NOID to submit any information the applicant felt was relevant to his case.

In response, counsel asserted that any discrepancies relating to the applicant's initial date of entry to the United States should not negatively affect his credibility because he did not start public school or receive a formal education until 1983 and because he is hearing impaired. In support of these assertions, counsel submitted affidavits from the applicant's siblings and members of his church.

On January 14, 2006, the director denied the application, finding that there was no reason, from the evidence presented, to believe it more likely than not that the applicant entered the United States prior to January 1, 1982.

On appeal, counsel for the applicant asserts that the discrepancies in the recollection of dates and addresses by the applicant should not have a negative effect on his credibility because he is hearing impaired and because he did not attend school until 1983. Counsel further asserts that the applicant signs in English but that his family speaks Spanish and that the applicant relies on his family and church friends regarding his dates of entry to the United States and addresses prior to the date his formal education began.

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 during the requisite period.

After a thorough review of the file, the AAO finds that the documentation submitted by the applicant is sufficient to establish his required continuous residence and continuous physical presence in the United States.

### School Records

- A letter from the Dallas Independent School District indicating that the applicant was enrolled in school every year, beginning on October 13, 1983, through March 17, 1988.

### Affidavits

- An affidavit from [REDACTED] the applicant's friend. Ms. [REDACTED] states that she met the applicant at church, on February 14, 1981, one week after he entered the United States. She states that the applicant's brother and sisters introduced the applicant to her and told her that he had just arrived. She dates her recollection through the birth of her niece, who was born the day before she met the applicant at Sunday services. Her niece was born on February 14, 1981;
- An affidavit from [REDACTED] the applicant's younger sister. Ms. [REDACTED] recalls that during her second grade of elementary school, which occurred between August 1980 and June 1981, the applicant was sent to live in the United States. She dates her recollection based on being in the second grade when this event occurred and on the fact that the applicant left Mexico shortly after Las Posadas, which would have been about January or February 1981;
- An affidavit from [REDACTED], the applicant's older brother. Mr. [REDACTED] asserts that their parents sent the applicant to live with him to look for a cure for the applicant's deafness. The applicant arrived in the United States in February 1981. He states that he did not enroll the applicant in school when he first arrived because the family did not think him eligible because he was deaf. Later, the applicant began taking sign language classes at church and went to a doctor who told the family that the applicant's deafness could not be cured, but that the public schools would provide him hearing services and an education.
- An affidavit from [REDACTED] pastor of Iglesia Emmanuel. Pastor [REDACTED] states that he founded the church in about January 1981. He asserts that he is absolutely positive that the applicant resided in the United States since at least June 1981, because he recalls that the applicant attended summer bible school the year the church was founded. He remembers that he was nervous on the first day of summer school because the applicant was deaf and he had not expected any deaf students in the class. Pastor [REDACTED] states that the church started with about 20 members and that it now has about 70. He states that it is

known that the applicant was one of the original participants in the church. He states that the church did not begin maintaining membership records until 1992.

- An affidavit from [REDACTED] Mr. [REDACTED] states that he is sure of the date he met the applicant because he was the Sunday school superintendent of Templo Christian Sinai church when he met the applicant in February 1981. He states that the applicant attended services at his church on Wednesday, Friday, and Sunday nights. He states that he knew at the time that the applicant attended summer bible classes at Iglesia Emmanuel at that time. He states that he remembers the applicant well because he was the only deaf child at the church. Mr. [REDACTED] asserts that he was church secretary and in charge of membership records at the time the applicant was a member. He states that he created a membership record for the applicant in 1981. He states that the church's records were destroyed in a fire that burned the church building in April 1989.

Together, these affidavits adequately explain the inconsistencies mentioned by the interviewing officer regarding the applicant's date of entry to the United States. They sufficiently explain why the same type of independent, primary evidence that establishes the applicant's continuous residence since about October, 13, 1983, was not available for the requisite time period before that. The affidavits explain why the applicant was not enrolled in school during that time. Ms. [REDACTED] established how she met the applicant and how she dated her acquaintance with the applicant. [REDACTED] indicated how she dated the applicant's departure from Mexico to the United States. [REDACTED] explained that the applicant was not enrolled in school until 1983 because the family did not believe he could attend school due to his deafness. He explained that once he got the proper evaluations and services, the applicant enrolled in public school. He explained that he took his brother to various doctors but that they lost contact with these doctors and were unable to obtain medical records from them. Pastor [REDACTED] dates his recollection of how and when he met the applicant based on the year he founded his church. He explains why his recollection is not based on membership records and why those records were not used as the basis of his recollection. [REDACTED] states that he created a church membership record for the applicant in 1981 and explains why this record is no longer available.

The documentation submitted is sufficient to corroborate the applicant's claim of continuous residence for the entire requisite period. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has done so.

Therefore, based on the above, the applicant has established entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is eligible for permanent resident status under Section 1104 of the LIFE Act.



**ORDER:** The appeal is sustained.