U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: DALLAS Date: SEP 10 2008

MSC 02 109 06793

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:

[redacted]

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: On March 13, 2006, 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 dismissed.

The director denied the application because the applicant failed to establish that he satisfied the basic citizenship skills requirement under section 1104(c)(2)(E) of the LIFE Act. The director provided the applicant two opportunities to pass the English literacy and/or the United States history and government tests. The applicant failed to pass the tests or submit relevant evidence as described in the regulations at 8 C.F.R. § 245a.17. The director also found that the applicant did not establish eligibility for an exception to the English and civics requirement due to a developmental disability. Finally, the district director denied the application because the applicant failed to establish that he been illegally and physically present in the United States from January 1, 1982, through May 4, 1988.

Counsel asserts that the applicant did satisfy the requirement to demonstrate an understanding of the English language and to demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States. Counsel also asserts that the applicant did satisfy the requirement to demonstrate his proof of presence from 1982 to 1988.

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(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 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 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.

Under section 1104(c)(2)(E)(i) of the LIFE Act ("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.

Under section 1104(c)(2)(E)(ii) of the LIFE Act, the Attorney General may waive all or part of the requirements for aliens who are at least 65 years of age or developmentally disabled.

The regulation at 8 C.F.R. § 245a.17(b) states that:

> An applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the interview, shall be afforded a second opportunity after 6 months (or earlier at the request of the applicant) to pass the tests or submit evidence as described in paragraphs (a)(2) and (a)(3) of

this section [8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3)]. The second interview shall be conducted prior to the denial of the application for permanent residence and may be based solely on the failure to pass the basic citizenship skills requirements.

8 C.F.R. § 245a.17 states in relevant part:

> (c) Exceptions. LIFE Legalization applicants are exempt from the requirements listed under paragraph (a)(1) of this section if he or she has qualified for the same exceptions as those listed for naturalization applicants under §§ 312.1(b)(3) and 312.2(b) of this chapter. Further, at the discretion of the Attorney General, the requirements listed under paragraph (a) of this section may be waived if the LIFE Legalization applicant:
>
> (1) Is 65 years of age or older on the date of filing; or
> (2) Is developmentally disabled as defined under § 245a.1(v).

8 C.F.R. § 312.1(b)(3) states, in relevant part:

> The requirements of paragraph (a) of this section shall not apply to any person who is unable, because of a medically determinable physical or mental impairment or combination of impairments which has lasted or is expected to last at least 12 months, to demonstrate an understanding of the English language as noted in paragraph (a) of this section. The loss of any cognitive abilities based on the direct effects of the illegal use of drugs will not be considered in determining whether a person is unable to demonstrate an understanding of the English language. For purposes of this paragraph, the term medically determinable means an impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical or laboratory diagnostic techniques to have resulted in functioning so impaired as to render an individual unable to demonstrate an understanding of the English language as required by this section, or that renders the individual unable to fulfill the requirements for English proficiency, even with reasonable modifications to the methods of determining English proficiency as outlined in paragraph (c) of this section.

8 C.F.R. § 312.2 states, in relevant part:

> Knowledge of history and government of the United States.
> (a) General . No person shall be naturalized as a citizen of the United States upon his or her own application unless that person can demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States. A person who is exempt from

the literacy requirement under § 312.1(b)(1) and (2) must still satisfy this requirement.

(b) Exceptions. (1) The requirements of paragraph (a) of this section shall not apply to any person who is unable to demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States because of a medically determinable physical or mental impairment, that already has or is expected to last at least 12 months. The loss of any cognitive skills based on the direct effects of the illegal use of drugs will not be considered in determining whether an individual may be exempted. For the purposes of this paragraph, the term medically determinable means an impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical or laboratory diagnostic techniques to have resulted in functioning so impaired as to render an individual to be unable to demonstrate the knowledge required by this section or that renders the individual unable to participate in the testing procedures for naturalization, even with reasonable modifications.

(2) Medical certification. All persons applying for naturalization and seeking an exception from the requirements of § 312.1(a) and paragraph (a) of this section based on the disability exceptions must submit Form N-648, Medical Certification for Disability Exceptions, to be completed by a medical or osteopathic doctor licensed to practice medicine in the United States or a clinical psychologist licensed to practice psychology in the United States (including the United States territories of Guam, Puerto Rico, and the Virgin Islands). ... These medical professionals shall be experienced in diagnosing those with physical or mental medically determinable impairments and shall be able to attest to the origin, nature, and extent of the medical condition as it relates to the disability exceptions noted under § 312.1(b)(3) and paragraph (b)(1) of this section.

8 C.F.R. § 245a.1(v) states:

(v) The term developmentally disabled means the same as the term developmental disability defined in section 102(5) of the Developmental Disabilities Assistance and Bill of Rights Act of 1987, Pub. L. 100 - 146. As a convenience to the public, that definition is printed here in its entirety:

The term developmental disability means a severe, chronic disability of a person which:

(1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) Is manifested before the person attains age twenty-two;

> (3) Is likely to continue indefinitely;
>
> (4) Results in substantial functional limitations in three or more of the following areas of major life activity: (i) Self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and
>
> (5) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

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 1104(c)(2)(E)(i) of the LIFE 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). The GED or high school diploma may be submitted either at the time of filing the Form I-485 LIFE Act application, subsequent to filing the application but prior to the interview, or at the time of the interview. *Id.*

Finally, an applicant may establish that he or she has met the requirements of section 1104(c)(2)(E)(i) of the LIFE Act by establishing that:

> He or she has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance. The course of study at such learning institution must be for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and the curriculum must include at least 40 hours of instruction in English and United States history and government. The applicant may submit certification on letterhead stationery from a state recognized, accredited learning institution either at the time of filing Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview (the applicant's name and A-number must appear on any such evidence submitted).

8 C.F.R. § 245a.17(a)(3).

An 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

(or earlier at the request of the applicant) to pass the required tests or to submit the evidence described above. *See* 8 C.F.R. § 245a.17(b).

The record reflects than on January 17, 2002, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On September 30, 2003, the interviewing officer issued the applicant a Form I-72, Request for Evidence (RFE), requesting that the applicant submit proof of having lived and/or worked illegally in the United States from January 1, 1982, until May 4, 1988. The applicant was also asked to submit his last three income tax returns.

In response to the RFE, the applicant submitted a Form **N-648, Medical Certification for** Disability Exceptions, dated December 11, 2003, signed by [redacted] **a medical** assessment from Molina Medical Surgery Center, a letter regarding surgery on his left shoulder in 1981, a work letter from the J-20 Corporation, 2000, 2001, and 2002, Internal Revenue Service (IRS) Forms 1040, with accompanying IRS Forms W-2, a 1989 Form W-2, a 1986 Form 1040EZ, and a 1985 Form 1040A.

Pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed twice in connection with his LIFE Act application, on August 8, 2002, and September 30, 2003.

On April 22, 2004, the director sent the applicant a Notice of Intent to Deny (NOID) the application. The director stated that the applicant failed to demonstrate knowledge and understanding of the fundamentals of English, and of the principles and form of government of the United States. The director noted that the applicant was then scheduled for a second interview on September 30, 2003, and afforded a second opportunity to pass the test. The director indicated that the applicant again failed to demonstrate knowledge of English, and of the government and history of the United States. The applicant was afforded 30 days to submit any evidence he felt would overcome the stated reasons for denial.

In response to the NOID, counsel asserted that the applicant qualified for waiver under INA section 312(b) because of a learning disability. Counsel noted that a Form N-648 signed by [redacted] had been submitted to support the applicant's waiver application. Counsel asserted that the NOID did not assess these supporting documents and did not address the waiver issue. Counsel submitted a second Form N-648, signed by [redacted]. Counsel asserted that the applicant was experiencing a learning deficit and was unable to learn or retain new information since 1980 after his head surgery. Counsel noted that the applicant could not perform a single mental task such as remembering three subjects after 2 minutes, not even in Spanish.

On February 9, 2005, the director issued a second NOID, stating that on September 30, 2004, the applicant was interviewed and asked to send in additional evidence proving his presence during the required dates. The director noted that documents submitted in response to the request for evidence conflicted with other documents in the file. The director 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.

On March 13, 2006, the director denied the application, finding that the Form N-648 submitted in response to the April 22, 2004, NOID did not meet the requirements listed in 8 C.F.R. § 245a.1. The director noted that on September 30, 2003, the applicant was asked to provide additional evidence proving presence during the required periods.

On appeal, counsel asserts that the applicant qualifies for the language and civics requirement exception under 8 C.F.R. § 245a.17 because he completed a course called "ESL: Fundamentals for Workforce." Counsel asserts that the applicant did submit substantial and verifiable evidence of presence and residence from 1982 to 1988. Counsel does not address the applicant's qualification for a disability exception or medical waiver of the civics requirement.

The first issue in this proceeding is whether the applicant has submitted credible evidence to meet his burden establishing that he has satisfied the basic citizenship requirement or that he qualifies for an exception to that requirement. Here, the applicant has not met that burden.

The applicant does not satisfy the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because he does not meet the requirements of section 312(a) of the Immigration and Nationality Act (Act). An applicant can demonstrate that he or she meets the requirements of section 312(a) of the Act by "[s]peaking and understanding English during the course of the interview for permanent resident status" and answering questions based on the subject matter of approved citizenship training materials, or [b]y passing a standardized section 312 test . . . by the Legalization Assistance Board with the Educational Testing Service (ETS) or the California State Department of Education with the Comprehensive Adult Student Assessment System (CASAS)." 8 C.F.R. §§ 245a.3(b)(4)(iii)(A)(1) and (2).

The applicant has not satisfied the alternative of the basic citizenship skills requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act. Counsel asserts that the applicant qualifies for the language and civics requirement exception under 8 C.F.R. § 245a.17(3). To support his assertion, counsel cites the first sentence of that regulation: "[h]e or she has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance." Counsel, however, fails to cite the rest of the regulation: "[t]he course of study at such learning institution *must be for a period of one academic year* (or the equivalent thereof according to the standards of the learning institution) *and the curriculum must include at least 40 hours of instruction* in English and United States history and government." 8 C.F.R. § 245a.17(3). (Emphasis added).

Counsel submits a certificate of completion from Mountain View College, of the Dallas County Community Colleges, showing that the applicant completed a single course called "ESL: Fundamentals for Workforce." Completion of this single course falls short of the requirement under 8 C.F.R. § 245a.17(3). Counsel does not assert, nor does he submit documentation to establish that the course the applicant completed lasted for a period of one academic year and

that the curriculum for the course included at least 40 hours of instruction in English and U.S. history and government. The documentation submitted was only for the completion a single course. The documentation did not establish that this course lasted for a period of one academic year, and that the curriculum included 40 hours of instruction in English and United States history and government, as required under the regulation. The applicant's effort to satisfy the requirements, while commendable, is not sufficient to meet the requirement.

The applicant has not asserted nor has he established that he is developmentally disabled according to 8 C.F.R. § 245a.1(v). Therefore, we turn to whether the applicant qualifies for a waiver under 8 C.F.R. § 312.1(b)(3), i.e., whether the applicant unable to demonstrate an understanding of the English language and/or unable to demonstrate a knowledge and understanding of the fundamentals of the history and form of government of the United States because of a medically determinable physical or mental impairment.

In support of his claim that he qualifies for the waiver, the applicant has submitted the following:

1. A Form N-648, Medical Certification for Disability Exceptions, dated December 11, 2003, completed by [redacted], of Grand Prairie, Texas; and,

2. A Form N-648, dated May 19, 2004, completed by [redacted], of Irving, Texas.

[redacted] and [redacted] checked the corresponding boxes on the forms to indicate that, based on their examination of the applicant, his symptoms, previous medical records, clinical findings, or tests, the applicant has an impairment that affects his ability to learn and/or demonstrate knowledge; that the impairment lasted or is expected to last 12 months or longer; and that the applicant's impairment was not the direct effect of the use of illegal drugs.

In one write-in portion of the form, Diagnosis of Impairments, at question 2(a) [redacted] provides the following diagnosis: "Inability to learn or comprehend new language with some mild memory deficit and loss. His mental speech and language disability is not in any way **disqualify him from citizenship. His health is otherwise very good."** [redacted] stated: "Cognitive Learning Deficit, Closed Head Injury – Patient has basically no formal education, and after a head injury in 1980 is unable to learn or retain new information."

At question 2(b) neither [redacted] nor [redacted] provides corresponding DSM-IV codes for the mental impairments he described.

At question 3 [redacted] stated the following regarding the connection between the impairments and the applicant's inability to learn and/or demonstrate a knowledge and understanding of English and/or U.S. history and civics:

> "Learning impairment with inability to comprehend or learn a new language as stated above in #2a."

[redacted] stated the following:

> "By any exam, patient was unable to perform even simple mental tasks, such as remembering three objects after 2 minutes, even in Spanish. He is unable to focus or concentrate in Spanish or English. He is unable to read, even in Spanish. He has no ability to learn."

At questions 4 and 5, [redacted] and checked the corresponding boxes to indicate that, in their professional opinion, the applicant's impairments affect his functioning to such a degree that he is unable to learn and/or demonstrate an ability to speak, read, or write English, and knowledge of U.S. history or civics, even in a language the applicant understands.

Finally, [redacted] and both indicate that this is their first examination of the applicant and that they do not know from whom the applicant usually receives medical care. [redacted] described the nature of his practice as family practice and [redacted] as neurosurgery.

Neither doctor attached to a list of his credentials or a report about the examination he conducted of the applicant. [redacted] does not assert and or appear to be experienced in diagnosing those with physical or mental medically determinable impairments. [redacted] did not provide a specific diagnosis and neither doctor provided a corresponding DSM-IV code for the impairment they diagnosed. [redacted] diagnosed the applicant with a general learning impairment but did not attest to the origin, nature, and extent of the impairment. [redacted] diagnosed the applicant with cognitive learning deficit and closed head injury but did not attest to the nature and extent of the impairments. Neither doctor indicates what, if any, medically accepted tests were used to measure the impairments they diagnosed or to even indicate what examination they administered to arrive at their diagnoses. Finally, [redacted] and [redacted] do not explain how the diagnosed impairments prevent the applicant from learning or demonstrating knowledge of English and/or U.S. history and government.

Thus, the applicant has failed to establish that he satisfies the basic citizenship skills requirement of the LIFE Act or that he qualifies for the medically determinable impairment exception to the basic citizenship skills requirement, as defined under regulations pertinent to LIFE legalization. *See* 8 C.F.R. §§ 245a.17(c), 312.1(b)(3) and 312.2(b).

The second 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.

In the April 22, 2004, and February 9, 2005, NOIDs, the director stated that the applicant failed to submit evidence to establish that he had been illegally and physically present in the United

States from January 1, 1982, through May 4, 1988. The director 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, the applicant submitted additional affidavits and a work letter from the J-20 Corporation.

On March 13, 2006, the director denied the application, finding that the applicant failed to provide credible and verifiable evidence of his presence during the required time period from January 1, 1982, through 1985. The director erred in stating that the applicant must establish continuous physical presence from before January 1, 1982, through 1985. A LIFE applicant must establish continuous unlawful residence from before January 1, 1982, through May 4, 1988, and continuous physical presence from November 6, 1986, through May 4, 1988. Nonetheless, this is harmless error. The director noted that a work letter from the J-20 Corporation conflicted with documentation previously submitted by the applicant from other employers and the Social Security Administration. The director also noted that state records indicated that the J-20 Corporation did not start as a corporation until 1984.

On appeal, counsel asserts that the evidence submitted by the applicant, establishes, by a preponderance of the evidence, that the applicant was physically present in the United States from 1982 to 1988.

The applicant has submitted documentation to establish that he was physically present in the United States beginning in 1985 to the present. He has not, however, submitted evidence to establish his continuous residence and continuous physical presence prior to that date. The applicant submitted various documents as well as several affidavits as evidence to support his Form I-485 application. Some of the evidence submitted is either undated or indicates that the applicant resided in the United States after his last entry without inspection, near San Diego, California, in January 1988, and is not probative of residence before that date. The following evidence relates to the requisite period:

Employment Letter:

- The applicant submitted an employment letter from [redacted], General Manager of the J-20 Corporation, dated May 16, 1990. [redacted] stated that the applicant worked for the J-20 Corporation from April 2, 1981, to November 29, 1989, in different positions and that, at the time the letter was written, he was a vacuum man as part of the nightly cleaning crew.

This letter can be given little evidentiary weight. Specifically, the employer failed to provide the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the employer also failed to declare whether the information provided was taken from company records, to identify the location of such company records, and to state whether such records are accessible, or, in the alternative state the reason why such records are unavailable.

Affidavits:

A letter from [redacted], the applicant's neighbor. In the June 26, 1990, letter, [redacted] states that the applicant lived in the same apartment complex as she from 1981 to the date the letter was written. She does not, however, state the address where she and the applicant lived during that time period or provide any details about that time period, such as how frequently or under which circumstances she saw or spoke with the applicant.

- Two affidavits from his sister, In a fill-in-the-blank affidavit notarized on June 14, 1990, states that she knew that the applicant had been in the United States since 1981. In a letter dated June 26, 1990, she states that the applicant lived with her and shared rent and utility expenses with her.

- A form affidavit from [redacted], the applicant's friend. In the June 13, 1990, letter, [redacted] states that she knew that the applicant resided and maintained a residence at Grand Prairie, Texas, from 1980 until the date the letter was written.

- Two brief, notarized letters from [redacted] and [redacted], who simply provide their addresses and state that they have known the applicant since 1980 when he lived in North Dallas, at [redacted]

A letter from stating that he has known the applicant for the past 20 years since the applicant had left shoulder surgery in 1981.

These affidavits can be given little evidentiary weight, as they are not sufficiently detailed. The applicant's sister did not state the address where she and the applicant lived together during that time period, or how long the applicant lived with her. She provided no other details other about their lives together in the United States. The affidavit from [redacted] contained blanks that were filled in and no other details about where, when, or how she met the applicant. Neither letter from [redacted] or [redacted] provides details about where, when, or how they met the applicant, or states how long the applicant lived at the address in North Dallas.

The record of proceedings contains various other documents, including a Social Security earnings record, indicating earnings from 1985 to 1992; time sheets from 1990; and a work letter indicating employment from November 29, 1989, to June 26, 1990. None of this evidence addresses the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have first entered the United States without inspection on March 16, 1981, and to have resided for the duration of the requisite period in Texas. As noted above, to

meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

Therefore, based on the above, the applicant has failed to establish 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 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.