

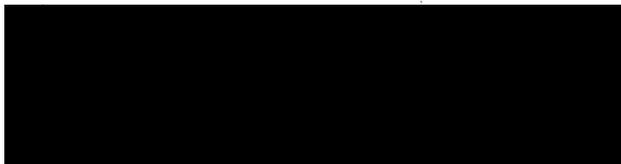
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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: San Francisco

Date: FEB 08 2005

IN RE:

Applicant:



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. All documents have been returned to the office that originally decided your case. 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, Director  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Interim District Director, San Francisco, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the evidence submitted by the applicant had not established that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. In addition, it was determined that the applicant's previous application for class membership had been revoked due to his having provided fraudulent applications in connection with an immigration benefit.

On appeal, the applicant requested that he be provided with a copy of the record of proceedings relating to his application for adjustment to permanent resident status under the LIFE Act. In response to the applicant's request, the AAO provided him with a copy of the record on December 15, 2004. In response, the applicant submitted a subsequent statement in support of his claim to continuous residence in the U.S.

The applicant appears to be represented; however, the individual identified as representing the applicant is not authorized to do so under 8 C.F.R. § 292.1 or § 292.2. Therefore, the notice of decision will be furnished only to the applicant.

"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 amenability to verification. 8 C.F.R. § 245a.12(e).

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. *See Matter of E-- M--*, 20 I&N Dec. 77 (Comm. 1989).

Although CIS 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence since before January 1, 1982, as claimed, the applicant furnished evidence including an affidavit attesting to the applicant's residence since 1981, an affidavit attesting to the applicant's church attendance since 1987, an affidavit attesting to the applicant's agricultural employment from 1982 to 1986, a letter attesting to the applicant's employment for a roofing concern since 1987, photocopies of W-2 forms, photocopies of earnings statements and photocopied postal receipts.

The regulations at 8 C.F.R. § 245a.2(d) provide a list of documents that may establish continuous residence and specify that "any other relevant document" may be submitted. However, while the documentation provided by the applicant could possibly be considered as evidence of continuous residence during the period under discussion, certain questions arise which impact on the overall credibility of his claim and documentation.

In his notice of decision, the director determined that the applicant's previous application for class membership had been revoked due to his having provided fraudulent applications in connection with an immigration benefit. The record indicates that on January 14, 1997, the District Director, San Francisco, has issued a Final Revocation of the applicant's application for class membership in the *CSS v. INS* legalization class-action lawsuit. The application had been revoked due to the applicant having provided documentation notarized by an individual subsequently convicted of Conspiracy to Create and/or Supply Fraudulent Documents. Nevertheless, as the applicant had previously registered as a class member in 1990, the revocation of his class membership would not render him ineligible for filing a subsequent application for adjustment to permanent resident status under the LIFE Act.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center [or other office] does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis). While not mentioned in the district director's decision or notice of intent, the record indicates that, on April 3, 2003, the applicant, in a sworn statement taken under oath in the presence of an officer of Citizenship and Immigration Services (CIS), acknowledged having been absent from the U.S. during the period in question. In response to a query from the examining CIS officer regarding whether he had ever departed the U.S., the applicant asserted that in early October 1985, he traveled to Mexico to visit his family, and remained until early December 1985, when he returned to the U.S. The applicant further asserted that from June through August 1986, he again traveled to Mexico in order to visit his family. This information regarding the applicant's departures from the U.S. in 1985 and, again, in 1986 was *not* included by the applicant on his previously-completed Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (INA).

As noted previously, 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. It is determined that the applicant's admitted absence from early October 1985 to early December 1985 exceeded the 45-day period allowable for a single absence. Nevertheless, there must also be a further determination as to whether the applicant's prolonged absence from the U.S. was due to an "emergent reason." 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." In his sworn interview statement, the applicant asserted that his 1985 departure to Mexico was for the purpose of visiting his family in Mexico. No further explanation for this departure was provided by the applicant. While this suggests there may have been a valid basis for the applicant's departure from the United States, it also suggests the applicant intended to remain outside of the U.S. for as long as it took to complete the purpose of his trip, *i.e.* for an indefinite period or, at least, for the duration of visit to his family in Mexico. The applicant has, therefore, failed to provide any clear evidence of an intention to return to the U.S. within 45 days. Accordingly, in the absence of clear evidence that the applicant intended to return within 45 days, it cannot be concluded that an emergent reason "which came suddenly into being" delayed or prevented the applicant's return to the United States beyond the 45-day period.

As indicated previously, the information provided by the applicant in his sworn statement regarding his departures from the U.S. in 1985 and, again, in 1986 was *not* included on his previously-completed Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (INA). At item 35 of his I-687 application, which was signed on July 31, 1990, the only absence listed was a brief visit by the applicant to his native Mexico during the month of July 1987. The omission of the applicant's 1985 and 1986 departures on his I-687 application, along with his having already been determined by CIS to have provided documentation from an individual subsequently convicted of Conspiracy to Create and/or Supply Fraudulent Documents, diminishes the credibility of the applicant's claim and documentation in support of his eligibility for permanent residence under the LIFE Act.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such 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).

As the applicant's 1985 and 1986 departures for Mexico have been determined to exceed the 45-day period allowable for single absences from the U.S. from January 1, 1982 to May 4, 1988, and in view of the diminished credibility of his claim and documentation, the applicant has failed to establish having resided in continuous unlawful status in the U.S. during the period in question. The applicant is therefore ineligible for adjustment to permanent resident status under section 1104(c)(2)(B) of the LIFE Act.

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