

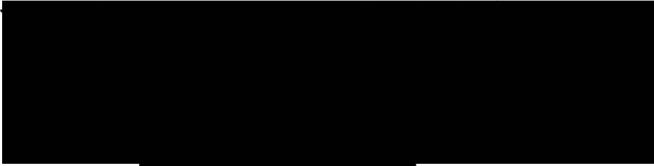


U.S. Citizenship
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Office: Los Angeles

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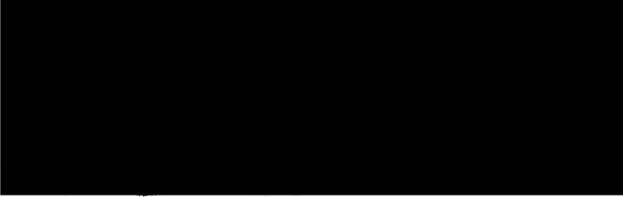
Applicant:



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. 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, 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 denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, counsel objects to the fact that the applicant was not granted an extension to reply to the notice of intent to deny. Counsel reiterates the applicant's claim of continuous residence in the United States since prior to January 1, 1982 and submits documentation in support of that claim.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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. See 8 C.F.R. § 245a.12(e).

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 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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 petitioner 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 petitioner 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 or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act) on or about November 20, 1990. At part #32 of the Form I-687 application where applicants were asked to provide information regarding their immediate family, the applicant listed his wife's name as [REDACTED] and indicated that his three daughters [REDACTED] with a date of birth of January 1, 1979, [REDACTED] with a date of birth of December 16, 1982, and [REDACTED] with a date of birth of July 31, 1985, were all born in Tijuana, Mexico. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry, the applicant listed [REDACTED] in San Diego, California from June 1982 to September 1985, [REDACTED] from October 1985 to December 1986, and [REDACTED] from January 1987 to December 1988. In addition, at part #35 of the Form I-687 application where applicants were asked to list all absences from the United States since first entry, the applicant indicated that he traveled to Mexico in October 1985 to bring his family to live with him in San Diego, California and that he again traveled to Mexico in August 1987 because his wife had surgery. Further, at part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since first entry, the applicant indicated that he was employed by Taco Fiesta in San Diego, California from June 1982 to August 1985 and Cotija Taco Shop in San Diego, California from September 1985 to September 1988. The fact that the applicant listed his first address of residence in the United States as beginning in June 1982 at part #33 of the Form I-687 application and his first employment in this country as beginning in June 1982 at part #36 of the Form I-687 application seriously undermines the credibility of his claim of residence in the United States since prior to January 1, 1982.

With the Form I-687 application, the applicant included a "Form for Determinations of Class Membership in CSS v. Meese." At question #6 of the determination form where applicants were asked to list the date they first entered the United States, the applicant indicated that he first entered this country on "June 8, 1982." The applicant failed to provide any explanation as to how he could have resided in the United States from prior to January 1, 1982 in light of his testimony that he first entered this country on June 8, 1982 at question #6 on the determination form.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted the following contemporaneous documents: eighteen statements of earnings and deductions reflecting wages earned by him for work performed at Taco Fiesta for various dates ranging from July 21, 1982 to November 19, 1984, eleven receipts reflecting hours worked by and wages paid to the applicant for work performed at Cotija Taco for various dates from July 7, 1986 to November 24, 1986, a residential lease dated October 10, 1985 for the premises located at [REDACTED] [REDACTED] and another residential lease dated June 6, 1982 and related addendums for the premises at [REDACTED] California. Although these contemporaneous documents tend to corroborate the applicant's claim of residence in this country from June 1982

onwards, the applicant failed to provide any type of evidence to establish residence in the United States from prior to January 1, 1982 to June 1982.

The record shows that the applicant appeared for an interview relating to his Form I-687 legalization application on November 20, 1990. The notes of the interviewing officer reflect that during the course of this interview, the applicant testified under oath that his initial entry into the United States occurred in June 1982. The record contains a signed sworn statement written by the applicant in his own hand and in his native language of Spanish that states in pertinent part: "Yo [applicant's name] declaro sobre juramento que entre a Estado Unidos en Junio 8 1982 por primera." The English translation of the applicant's signed sworn statement is "I [applicant's name] declare under oath that I entered the United States on June 8, 1982 for the first time." The applicant's admission that he entered the United States for the first time on June 8, 1982 seriously impairs the credibility of his claim that he resided in this country prior to January 1, 1982 to May 4, 1988, as well as the credibility of any and all documents submitted in support of that claim.

The record shows that the applicant filed his Form I-485 LIFE Act application with the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services or CIS) on May 17, 2002. The applicant also provided a Form G-325A, Report of Biographic Information, in which he listed his wife's name as [REDACTED] and copies of previously submitted documents in support of his claim of residence in this country for the requisite period.

The applicant submitted a personal statement in which he now claimed that he first entered the United States by crossing the border at San Ysidro, California on November 20, 1981. However, the applicant failed to provide any explanation as to why he previously indicated that he began his residence and employment in the United States in June 1982 on the Form I-687 application, why he listed June 8, 1982 as the date he first entered the United States at question #6 of the determination form, and why he provided a signed sworn statement written in his own hand and in his native language of Spanish in which he specifically acknowledged that he entered the United States for the first time on June 8, 1982.

The applicant also submitted an affidavit that is signed by [REDACTED] who stated that he had known the applicant for approximately twenty-one years since 1980, initially as a friend and then subsequently as his brother-in-law. However, [REDACTED] failed to provide any specific, relevant, and verifiable testimony relating to the applicant's residence in this country from prior to January 1, 1982 to May 4, 1988.

The record reflects that the applicant appeared for an interview relating to his Form I-485 LIFE Act application on February 25, 2004. The notes of the interviewing officer reveal that the applicant testified under oath that his children were all born in Mexico and that his wife would come to visit him in the United States with a visa. The applicant further testified that his wife lived in Tijuana, Mexico because she had a business there and did not want to live in the United States. The applicant also reiterated that the reason why he traveled to Mexico in October 1985 was "went for family."

The record shows that the applicant submitted a letter that is signed by [REDACTED] at the time of his interview. In her letter, [REDACTED] stated that she became acquainted with the

applicant in October or November of 1981 and that she and the applicant maintained their friendship throughout the years by visiting each other's homes and mutual friends in the San Diego, California area. However, [REDACTED] testimony lacks specificity as it does not include any relevant and verifiable information, such as the applicant's address(es) of residence, relating to his claim of residence in this country from prior to January 1, 1982 to May 4, 1988.

The applicant also submitted an affidavit that is signed by [REDACTED] who declared that he employed the applicant on a part-time basis at [REDACTED] from 1981 to 2000. While Mr. [REDACTED] attested to the applicant's part-time employment beginning in 1981, he failed to provide any other additional verifiable testimony relating to the applicant's residence in the United States for the requisite period. Further, as noted above, the applicant failed to list any employment for either Mr. [REDACTED] or [REDACTED] at part #36 of the Form I-687 application. The applicant failed to provide any explanation as to why he did not list such employment on the Form I-687 application if in fact he had worked as [REDACTED] claimed.

The applicant included an affidavit signed by [REDACTED] who indicated that she had known the applicant since 1981 when they met at a party and she and the applicant had remained friends since. However, [REDACTED] failed to provide any relevant details or specific verifiable information relating to the applicant's residence in this country from prior to January 1, 1982 to May 4, 1988.

On June 22, 2004, the district director issued a notice of intent to deny to the applicant informing him of CIS' intent to deny his LIFE Act application because of the fact that he failed to submit sufficient credible evidence of continuous unlawful residence in the United States for the period in question. The district director also noted that the applicant himself had provided a signed sworn statement at his interview on November 20, 1990, in which he admitted entering the United States on June 8, 1982. The applicant was granted thirty days to respond to the notice and provide additional evidence in support of his claim of residence in the requisite period.

In response, counsel requested a ninety-day extension to submit additional documentation in support of the applicant's claim of residence in this country from prior to January 1, 1982 to May 4, 1988. However, the record contains no evidence to reflect that the district director granted the applicant additional time to submit a response to the notice of intent to deny.

The district director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988, and, therefore, denied the Form I-485 LIFE Act application on September 8, 2004.

On appeal, counsel objects to the fact that the applicant was not granted a full 90 days as had been previously requested to submit a substantive response to the notice of intent to deny. The relevant regulation at 8 C.F.R. § 245a.20(a)(2) states, in pertinent part:

Denials. The alien shall be notified in writing of the decision of denial and of the reason(s) therefore. When an adverse decision is proposed, CIS shall notify the applicant of its intent to deny the application and the basis for the proposed denial. The applicant will be granted a period of 30 days from the date of the notice in

which to respond to the notice of intent to deny. All relevant material will be considered in making a final decision. If inconsistencies are found between information submitted with the adjustment application and information previously furnished by the alien to CIS, the alien shall be afforded the opportunity to explain discrepancies or rebut any adverse information. An applicant affected under this part by an adverse decision is entitled to file an appeal on Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO), with required fee specified in § 103.7(b)(1) of this chapter.

Clearly, the regulation cited above contains no provision allowing or guaranteeing an applicant that had been issued a notice of intent to deny any more than 30 days from the date of the notice to submit a response. In addition, a review of the record shows that counsel submitted her response to the notice and new evidence in support of the applicant's claim of residence with the appeal. Therefore, it must be concluded that the applicant has been afforded the opportunity to explain discrepancies and rebut any adverse information relating to his claim of residence in the United States for the period in question as cited in the notice of intent to deny. Consequently, any implication that the applicant was denied due process or unfairly prejudiced as a result of the district director's denial of the Form I-485 LIFE Act application is without merit.

On appeal, the applicant submits a statement in which he declares that he first came to the United States in November 1981 to reunite with his wife and they resided with his wife's sister at 4951 Baltimore Street in Los Angeles, California through June 1982. However, the applicant failed to offer any explanation as to why this address of residence was not listed at part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry.

The applicant states that he subsequently rented the house at the previously referenced Wightman Street address in San Diego, California on June 6, 1982, and that his wife moved into this house with him because she wanted to live close to the border in order to make numerous trips to Tijuana, Mexico to oversee her businesses. However, this statement contradicts the applicant's previous testimony at his interview on February 25, 2004 that his wife lived in Tijuana, Mexico because she had a business there and did not want to live in this country and that she and their daughters only joined him in the United States when he "went for family" to Mexico in October 1985. This contradiction is made even more evident by the fact that the applicant testified that their three daughters, with respective dates of birth of January 1, 1979, December 16, 1982, and July 31, 1985, were all born in Tijuana, Mexico at part #32 of the Form I-687 application.

The applicant declares that his only absence from the United States occurred when his wife underwent surgery in Mexico and he traveled to Mexico for ten days beginning on August 28, 1987. However, the applicant's declaration that this was his only absence from this country during the requisite period is directly contradicted by the fact that he listed an additional absence from the United States when he traveled to Mexico in October 1985 to bring his family to live with him in San Diego, California at part #35 of the Form I-687 application where applicants were asked to list all absences from the United States since first entry.

The applicant states that when he arrived in this country in November 1981 he began working with [REDACTED] selling blankets to retail stores, at swap meets, and downtown. However, the applicant fails to advance any explanation as to why he did not list this employment at part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since first entry.

The applicant asserts that he does not remember the exact date he first entered the United States but knows that he first entered this country a couple of days prior to Thanksgiving in November 1981. The applicant indicates that he made a mistake when he provided the sworn statement in which he testified that he first entered this country on June 8, 1982. The applicant declares that this particular date came to his mind because that was the date he rented the house on Wightman Street in San Diego, California. While the applicant's explanation attempts to address the reason he listed June 8, 1982 as his date of first entry into this country in his sworn statement, it does not address the fact that he also made essentially the same admission by indicating that he began his residence in the United States in June 1982 at part #33 of the Form I-687 application.

The applicant also submits a personal statement from his wife in which she claims that she first entered the United States in 1974 and that she resided with her sister at [REDACTED] Angeles, California. The applicant's wife states that the applicant came to this country in November 1981 and that they lived together at her sister's residence at the Baltimore Street address in Los Angeles, California. However, the applicant's wife fails to offer any explanation as to why this address of residence was not listed at part #33 of her husband's Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry.

The applicant's wife indicates that she and the applicant subsequently moved to San Diego, California in order to facilitate her trips to Tijuana, Mexico to oversee businesses that she owned in that city. However, this statement conflicts with the applicant's previous testimony at his interview on February 25, 2004 that his wife lived in Tijuana, Mexico because she had a business there and did not want to live in the United States and that she and their daughters only joined him in the United States when he "went for family" to Mexico in October 1985. This discrepancy in testimony is only enhanced by the fact that the applicant testified that their three daughters, with respective dates of birth of January 1, 1979, December 16, 1982, and July 31, 1985, were all born in Tijuana, Mexico at part #32 of the Form I-687 application.

The applicant's wife states that the applicant's only absence from the United States occurred when she underwent surgery in Mexico and he traveled to Mexico for about ten days beginning on August 28, 1987. However, the statement by the applicant's wife that this was his only absence from this country during the requisite period is directly contradicted by the fact that he listed an additional absence from the United States at part #35 of the Form I-687 and indicated that he traveled to Mexico in October 1985 to bring his family to live with him in San Diego, California.

The applicant's wife declares that she filed tax returns for 1978 and 1979 that did not include her husband because he was living in Mexico and did not possess a Social Security number. In support of this declaration, the applicant's wife submits Federal and California tax returns for 1978 that bear the name "[REDACTED]" Federal and California tax returns for 1979 that bear the name "[REDACTED]"

[REDACTED] a hand-written receipt for preparation of tax forms dated February 13, 1981 that bears the name [REDACTED] and a certificate of completion for English as a second language from the Adult Education Division of Glendale Community College dated June 18, 1981 that bears the name [REDACTED]. However, at part #32 of the Form I-687 application where applicants were asked to provide information regarding their immediate family, the applicant listed his wife's name as [REDACTED]. Furthermore, the applicant subsequently provided a Form G-325A in which he listed his wife's name as [REDACTED]. At no point in these proceedings has the applicant asserted that his wife's name was [REDACTED].

Neither the applicant nor his wife offers any explanation for this discrepancy. Without direct and independent evidence to corroborate the claim that the applicant's wife used names other than [REDACTED] any representation that the applicant's wife used the names [REDACTED] or [REDACTED] cannot be considered as credible. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant also submits another new affidavit that is signed by [REDACTED]. In his new affidavit [REDACTED] declares that the applicant and his wife lived with him at his residence at [REDACTED] in Los Angeles, California beginning in November 1981 until the applicant and his wife subsequently moved to San Diego, California in June 1982. However, as has been previously discussed, the applicant failed to list this address of residence at part #33 of his Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry. In addition, [REDACTED] fails to provide any explanation as to why he failed to mention that the applicant and his wife lived with him at this address in his previously submitted affidavit.

The applicant also includes another new affidavit that is signed by [REDACTED]. In her new affidavit, [REDACTED] indicates that she has known the applicant since November 1981 when they met at a Thanksgiving party and she and the applicant had remained friends since. [REDACTED] states that the applicant and his wife initially lived with his wife's family at [REDACTED] California beginning in November 1981 until the applicant and his wife later moved to San Diego, California in June 1982. As has been discussed above, the applicant failed to list this address of residence at part #33 of his Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry. Further, [REDACTED] failed to provide any new details or verifiable information relating to the applicant's residence in this country from prior to January 1, 1982 to May 4, 1988 in this current affidavit.

The applicant also provides color copies of photographs showing him attending a baptism and standing outside a McDonald's restaurant. However, as neither the date nor location of such photographs can be readily ascertained, these photographs cannot be considered as probative in determining the credibility of the applicant's claim of residence in this country for the requisite period.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the

applicant 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).

The absence of sufficiently detailed supporting documentation and the existence of conflicting testimony that contradicts critical elements of the applicant's claim of residence seriously undermines the credibility of the supporting documents, as well as the credibility of the applicant's claim of residence in this country for the period in question. The applicant himself has negated the credibility of his claim of continuous residence in this country since prior to January 1, 1982 by providing a signed sworn statement written in his own hand in his native language of Spanish in which he admitted that he entered this country on June 8, 1982. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E-- M--*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon supporting documents with minimal probative value and his admission that he entered this country on June 8, 1982, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

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