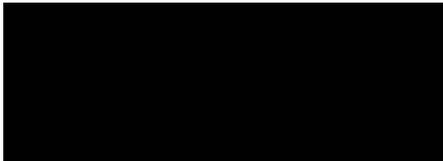




U.S. Citizenship  
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FILE:

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Office: CHICAGO

Date: MAR 28 2006

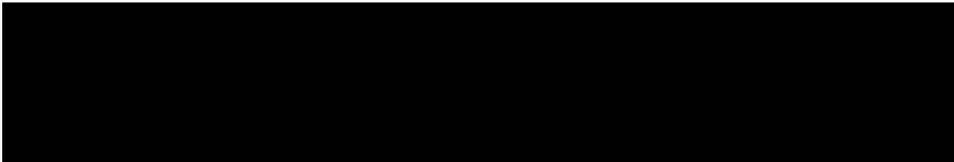
IN RE:

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.

3 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 District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. This matter will be remanded for further action and consideration.

The district director denied the application because the applicant had not demonstrated that he continuously resided unlawfully in the United States pursuant to the provisions of the LIFE Act, as he legally entered the United States pursuant to a B-1/B2 visitor's visa in March 1983.

On appeal, counsel states that, pursuant to the Board of Immigration's interim decision in *Matter of P*, 19 I&N Dec. 823 (BIA 1988), the director "erred in universally determining that anyone who entered on a valid visa during their period of unlawful presence in the United States be considered as breaking their 'unlawful presence' for purposes of the LIFE ACT." Counsel asserts that the beneficiary was entitled to present, and the service should have approved, a waiver of excludability . . . on the grounds of humanitarian consideration."

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that he or she entered the United States before January 1, 1982 and resided in this country continuously in an unlawful status from before January 1, 1982 through May 4, 1988. See section 1104(c)(2)(B)(i) of the LIFE Act and the regulations at 8 C.F.R. § 245a.11(b).

The regulation at 8 C.F.R. § 245a.2 provides, in pertinent part:

(b) Eligibility. The following categories of aliens, who are otherwise eligible to apply for legalization, may file for adjustment to temporary residence status:

(9) An alien who would be otherwise eligible for legalization and who was present in the United States in an unlawful status prior to January 1, 1982, and reentered the United States as a nonimmigrant, such entry being documented on Service Form I - 94, Arrival-Departure Record, in order to return to an unrelinquished unlawful residence.

The applicant stated that he initially entered the United States in April 1981 on a visitor's visa and violated the terms of the visa by overstaying his approved period and by working. The applicant stated that he left the United States for a period of approximately one month in 1983, and returned on an approved B-1/B-2 visa and immediately began working again. The applicant stated that he lied to the U.S. Consulate about his work intentions because he knew that if he said yes the visa would not be approved.

While the applicant made an apparently lawful entry into the United States with a B-1/B-2 visitor's visa in March 1983, the evidence indicates that this was not a lawful entry as the applicant was returning to an unrelinquished unlawful residence in the United States. Consequently, the applicant's entry into this country with an apparently valid B-1/B-2 visitor's visa cannot be considered as a lawful entry, and, therefore, it is concluded that this entry would not interrupt his continuous unlawful residence in the United States for the requisite period.

Nonetheless, the application may not be approved as the record now stands. The record does not contain sufficient credible evidence to establish that the applicant was present unlawfully in the United States prior to January 1, 1982.

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 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.

Although Citizenship and Immigration Services (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 through May 4, 1988, the applicant submitted a single affidavit attesting to the applicant's presence in the United States in May 1981. The applicant submitted no documentary evidence of his entry under a valid B-1 visa in 1981, no employment letters or other documentation establishing his presence in the United States prior to January 1, 1982 until 1987. The applicant submitted evidence of his presence in the United States beginning in 1987.

The decision of the district director is withdrawn. The case will be remanded for the purpose of determining whether the applicant's evidence establishes his presence in the United States prior to January 1, 1982. If the district director concludes that such evidence is not sufficient to fulfill this requirement, the deficiencies in the evidence must be specifically set forth in a notice of intent to deny prior to the issuing of a new decision. The new decision, if adverse, shall be certified to this office for review.

**ORDER:** This matter is remanded for further action and consideration pursuant to the above.