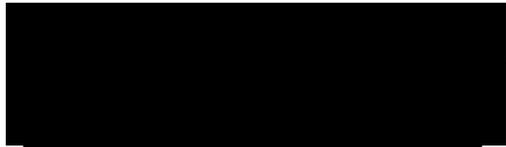




U.S. Citizenship  
and Immigration  
Services

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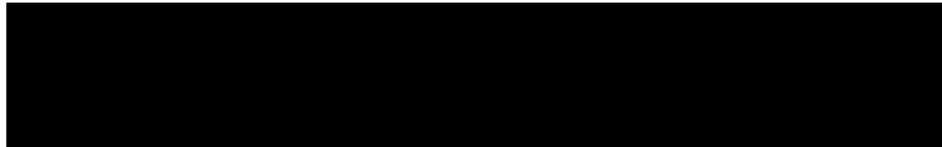
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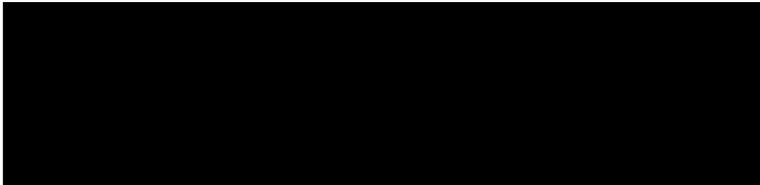
Applicant:



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. Any further inquiry must be made to that office.

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 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, the applicant states that he has resided continuously in the United States since March 1981, and that he has witnesses who are willing to come forward on his behalf. The applicant provides additional documentation in support of the appeal.

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. Section 1104(c)(2)(B) of the LIFE Act; 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 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 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).

On a form to determine class membership, which he signed under penalty of perjury on December 8, 1990, the applicant stated that he first entered the United States on March 12, 1981. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury on December 7, 1990, the applicant stated that he left the United States for Mexico from November 1983 to December 1983 on a vacation and from November 1987 to January 1988 for a "family reason." The applicant also stated that he worked at American Fiberglass Construction in Long Beach, California from

1981 through the date of the Form I-687 application. The applicant stated that he lived at the following addresses during the qualifying period:

March 1981 to February 1983  
February 1983 to June 1986  
June 1986 to June 1990

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted the following evidence:

1. A December 10, 1990 sworn statement from [REDACTED], the applicant's brother, in which he stated that the applicant lived with him from 1981 until the date of his statement. In a January 8, 2006 sworn statement submitted on appeal, [REDACTED] stated that the applicant lived with him at his home [REDACTED] in Long Beach from his entry into the United States in March 1981 until 1985, and then at [REDACTED] from February 1985 to 1988, after which they moved to [REDACTED]. This information is inconsistent with that provided by the applicant on his Form I-687 application and the information in his California Department of Motor Vehicle (DMV) records, discussed below. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).
2. A November 30, 1990 letter from American Fiberglass signed by [REDACTED] as manager, which stated that the applicant had worked for the company since October 6, 1981. The letter does not state whether the information regarding the applicant's employment was taken from company records or reflect the applicant's address at the time of his employment. 8 C.F.R. § 245a.2(d)(3)(i). The applicant submitted no documentation to corroborate his employment with American Fiberglass. Further, this statement is inconsistent with evidence, discussed below, reflecting that the applicant was employed by Vicorp Restaurants, Inc. during at least part of the year 1986.
3. A December 9, 1990 notarized statement from [REDACTED], in which he stated that he met the applicant through his brother in February 1982.
4. A copy of the applicant's July 6, 1983 player's card from the Santa Lucia Soccer League.
5. A December 9, 1990 sworn statement from [REDACTED], in which he certified that he met the applicant at work in October 1983. [REDACTED] did not indicate the company for which he and the applicant worked.
6. A July 1, 1985 PS Form 3806, Receipt for Registered Mail, indicating that the applicant was the sender.
7. An October 12, 1985 and a July 7, 1986 City of Long Beach soccer association membership card.
8. A December 8, 1990 sworn statement from [REDACTED] in which he stated that he met the applicant in March 1986 at his father's business, where the applicant was employed.

9. A July 16, 1986 receipt showing the applicant as the purchaser. The receipt does not identify a vendor, but shows that [REDACTED] the applicant's sister-in-law, received the purchase.
10. A copy of a medical record from [REDACTED] in Long Beach, apparently in connection with an on-the-job injury of the applicant. The document shows a date of injury of August 19, 1986 and the employer as Bakers Square.
11. Copies of April and May 1986 pay stubs from Vicorp Restaurants, Inc. and a copy of a 1986 Form W-2, Wage and Tax Statement, issued to the applicant by Vicorp Restaurants, Inc., Bakers Square, for wages in excess of \$6,000. The applicant did not identify Vicorp Restaurants or Bakers Square as an employer on his Form I-687 application. The Form W-2 also lists the applicant's address as [REDACTED] in Long Beach. The applicant did not identify this address as one of his residences during the requisite period. This information is inconsistent with the applicant's statement and that of his brother, in which they stated that the applicant lived with his brother at [REDACTED] and [REDACTED] during this period. The information is also inconsistent with the applicant's statement on his Form I-687 application, where he stated that he only worked for American Fiberglass during the requisite period. *Matter of Ho*, 19 I&N Dec. at 591.
12. A copy of a State of California Department of Motor Vehicle response to a driver license/identification card information request. The form shows the applicant's address as [REDACTED] as of September 18, 1986 and [REDACTED] as of November 12, 1987. As discussed above, the applicant did not identify [REDACTED] as one of his residences during the qualifying period.
13. A computer printout from St. Mary Medical Center, indicating that the applicant was admitted to the facility on September 30, 1986 and discharged on October 3, 1986.
14. A November 11, 2004 sworn statement from [REDACTED] in which he stated that he met the applicant in 1987.
15. A copy of a 1987 Form 1040, U.S. Individual Income Tax Return, and a Form 540, California Long Tax Form. The tax forms do not reflect that they were ever filed with the Internal Revenue Service or the California Franchise Tax Board.
16. The applicant's 1987 California driver's license.
17. A February 27, 1987 Notice of Determination from the State of California Employment Development Department to the applicant at [REDACTED] Long Beach, CA informing him that his claim for workers' compensation had been disapproved because he was covered by disability insurance.
18. A December 8, 1990 affidavit from [REDACTED] the applicant's sister-in-law, in which she stated that the applicant left the United States in November 1987 when he traveled to Mexico because his mother was gravely ill and returned in January 1988. In a February 28, 2002 affidavit, which she signed under the name [REDACTED], the affiant stated that the applicant lived with her from March 1981 through June 1989. In a January 8, 2005 sworn statement submitted on appeal, [REDACTED] also stated that the applicant lived with her and her husband beginning in March 1982.

These statements are inconsistent with those provided by the applicant and his brother, stating that the applicant arrived in the United States and lived with his brother beginning in March 1981. *Id.*

19. A June 29, 1988 Notice of Decision and Order from the Rehabilitation Bureau concerning the applicant and medical treatment that he received on June 17, 1987. The letter identifies the applicant's employer as Vicorp Restaurants. The applicant did not identify Vicorp Restaurants as one of his employers during the qualifying period.
20. A November 5, 2004 statement from [REDACTED], in which he stated that he is "aware" of the applicant and has "known of him" since 1988 when the applicant worked for his father at America Fiberglass.

The applicant also submitted a December 6, 1982 receipt from [REDACTED] Automotive Service for a tune up. However, the receipt does not show a customer's name, and therefore, is not probative of the applicant's presence and residence in the United States during the qualifying period.

On appeal, the applicant submitted additional documentation as discussed above, and a January 8, 2005 sworn statement from [REDACTED], in which he stated that he used to play soccer with the applicant and that the applicant taught him to drive a car in 1983.

While the applicant has submitted sufficient evidence to establish his presence and residency in the United States beginning in 1983, the evidence prior to that year is conflicting and less than persuasive. On his Form I-687 application, the applicant claimed to have worked for only one employer, American Fiberglass, throughout the qualifying period. This employment was confirmed by [REDACTED] as manager of the company. However, this information is contradicted by credible information in the record indicating that the applicant worked for Vicorp Restaurants, Inc. for a substantial period of time in 1986. The applicant submitted no corroborative evidence of his employment with American Fiberglass. On appeal, the applicant stated that during the requisite period, he worked for several other companies, including Marina Pacific Mall, EL Paso Cantina Restaurant, Red Onions, Baker's Square Restaurant, and two ranches while working off and on for American Fiberglass. The applicant submitted no competent objective documentary evidence to confirm his employment with any of these companies, with the one exception of Baker's Square Restaurant. *See Matter of Ho*, 19 I&N Dec. at 591.

Additionally, the applicant's brother and sister-in-law stated that he lived with them during the qualifying period. However, the addresses at which they lived do not correspond with the addresses at which the applicant stated that he lived during that time. Other evidence in the record, including the applicant's DMV record, is also inconsistent with the applicant's claimed residences and those identified by his brother and sister-in-law. The evidence submitted does not resolve these inconsistencies. *Id.*

Accordingly, it is concluded that the applicant has failed to establish continuous residence in the U.S. for the required period.

The applicant stated on his Form I-687 application that he was absent from the United States from November 1987 to January 1988 for family reasons. On the form to determine class membership, the applicant further identified these dates as from November 18, 1987 until January 3, 1988, a period of 46 days.

The regulations at 8 C.F.R. § 245a.15(c)(1), provide:

*Continuous residence.* An alien shall be regarded as having resided continuously in the United States if:

- (1) 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. [Emphasis added.]

While not dealt with in the district director's decision, there must, nevertheless, be a further determination as to whether the applicant's prolonged absence from the United States 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."

During his LIFE Act adjustment interview on January 15, 2003, the applicant stated that he could not remember the purpose of the trip he may have taken in 1987, but stated that he was out of the United States in March 1985 for approximately 12 days to attend his mother's funeral. However, on his Form I-687 application, signed on December 7, 1990, the applicant indicated that his mother was still living. Additionally, his sister-in-law stated in her December 8, 1990 affidavit that the applicant was in Mexico from November 1987 to December 1988 because his mother was "gravely ill." No evidence in the record resolves this conflict in the information provided by the applicant and his sister-in-law. *Matter of Ho*, 19 I&N Dec. at 591.

Assuming, *arguendo*, that the purpose of the applicant's visit in 1987 was because his mother was ill, the applicant provided no evidence that his return to the United States could not have been accomplished within 45 days. Accordingly, the applicant's 46-day stay in Mexico from November 18, 1987 to January 3, 1988 interrupted his "continuous residence" in the United States. The applicant has, therefore, failed to establish that he resided in the United States in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required by the statute, section 1104(c)(2)(B)(i) of the LIFE Act, and the regulations, 8 C.F.R. § 245a.11(b) and 15(c)(1). Given this, he is ineligible for permanent resident status under section 1104 of 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 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).

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa application proceedings, the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

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