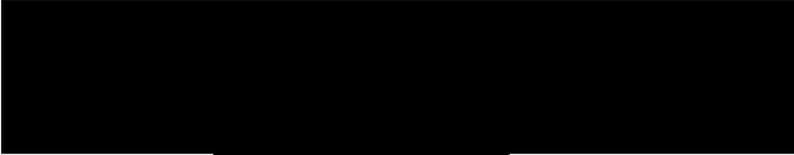


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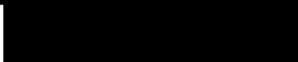
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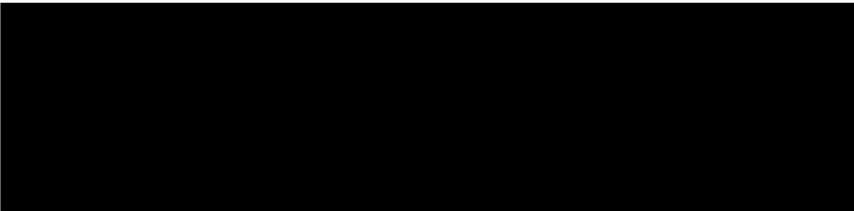
Applicant:



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. 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, and is now before the Administrative Appeals Office 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 from before January 1, 1982 through May 4, 1988. The director found that the applicant was in lawful status during the period. The director determined that the applicant entered in lawful status in 1981 with "a visa valid until August 10, 1983." The director also determined that a letter from the applicant's employer during the years 1981 through 1983 lacked information required of employment verification letters by 8 C.F.R. 245a.15(b)(1) and 8 C.F.R. 245a.2(d)(3).

On appeal, counsel asserts that the record shows that the applicant was admitted to the United States on July 29, 1981 in B-2 status for a period of ten days. Counsel contends that the director erred in concluding that the applicant's period of authorized stay lasted until the expiration date of the applicant's visa in 1983. Counsel also asserts that the employment verification letter disregarded by the director meets all regulatory requirements.

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.
- (ii) Nonimmigrants – In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, such alien must establish that the period of authorized stay as a nonimmigrant expired before such date through the passage of time or that the alien's unlawful status was known to the Government as of such date.

The word "Government" means the government of the United States. An alien who claims his unlawful status was known to the government as of January 1, 1982, must establish that prior to January 1, 1982, documents existed in one or more government agencies so, when such documentation is taken as a whole, it would warrant a finding that the alien's status in the United States was unlawful. *Matter of P-19 I. & N. Dec. 823 (Comm. 1988).*

Congress provided only two ways in which an applicant who had been admitted as a nonimmigrant could establish eligibility for permanent residence under the LIFE Act. The first was to clearly

demonstrate the authorized period of stay expired prior to January 1, 1982. The second was to show that, although the authorized stay had not expired as of January 1, 1982, the applicant was nevertheless in an unlawful status that was known to the Government as of that date. In doing so, Congress acknowledged it was possible to have an authorized stay and yet still be unlawful due to another reason, such as illegal employment. However, the LIFE Act very clearly states that the unlawfulness had to have been known to the Government as of January 1, 1982.

As cited above, pursuant to section 1104(c)(2)(B)(i) of the LIFE Act, the regulations prescribed by the Attorney General under section 245A(g) of the INA that were most recently in effect before the date of the enactment of the LIFE Act shall apply to determine whether an alien maintained continuous unlawful residence in the United States. Therefore, eligibility also exists for an alien who would otherwise be 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 in order to return to an unrelinquished unlawful residence. 8 C.F.R. §245a.2(b)(9). An alien described in this paragraph must receive a waiver of the inadmissibility charge as an alien who entered the United States by fraud. Section 212(a)(6)(C) [previously number Section 212(a)(19)] of the INA, 8 U.S.C. § 1182(a)(6)(c); 8 C.F.R. § 245a.2(b)(10).

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.

The applicant has failed to demonstrate that his authorized period of stay expired prior to January 1, 1982 as claimed. The record contains a copy of the applicant’s passport with stamps indicating that the applicant

entered the United States in B-2 status on July 29, 1981. The applicant has indicated that he was admitted for a period of ten days, but the record contains no additional evidence to support this assertion. The applicant's passport contains a stamp indicating that the applicant was also admitted to the United States on August 10, 1983. The record contains evidence indicating that the applicant testified during his interview, and indicated on his Form I-687, Application for Status as a Temporary Resident, that he departed from the United States with advance parole in July 1983, returning to the United States less than a month later. The record contains no evidence showing that the applicant's authorized period of stay in 1981 was extended or that the applicant was granted advance parole in 1983.

As stated above, the applicant must establish that his period of authorized stay as a nonimmigrant expired before January 1, 1982 through the passage of time. The typical period of authorized stay granted to individuals holding B-2 tourist-for-pleasure visas is six months. If the applicant was in fact granted the typical period of authorized stay upon being admitted on July 29, 1981, this period would not have expired by the passage of time before January 1, 1982. In the absence of evidence showing the actual period of authorized stay granted the applicant on July 29, 1981, the applicant has failed to meet his burden of proving that his lawful status expired prior to January 1, 1982.

Because the applicant has claimed that his authorized period of stay expired prior to January 1, 1982, the issue of whether the applicant's unlawful status was known to the government by this date has not been separately addressed. Although there is evidence in the record indicating that the applicant violated his legal status by working, there is no evidence in the record showing that the government became aware of this violation prior to January 1, 1982.

The applicant has claimed that he began working soon after arriving in the United States in 1981, employment that would constitute a violation of his B-2 status. The director erred in disregarding the letter from [REDACTED], President of [REDACTED] which indicated that the applicant began working for the company in August 1981. The director disregarded this letter on the grounds that it did not meet all the requirements for employment verification letters found in 8 C.F.R. § 245a.2(d)(3)(i). However, a letter not meeting all the requirements listed in 8 C.F.R. § 245a.2(d)(3)(i) may still merit consideration as "any other relevant document" under 8 C.F.R. § 245a.2(d)(3)(vi)(L). Notwithstanding, the [REDACTED] letter does not constitute proof that the government became aware that the applicant was in violation of his status prior to January 1, 1982, and there is no additional evidence in the record indicating that the government was aware of the applicant's employment prior to that date.

The applicant has not met his burden of proving continuous residence in an unlawful status in the United States from before January 1, 1982 through May 4, 1988. Accordingly, the applicant has not established eligibility to adjust status to Legal Permanent Resident status under section 1104 of the LIFE Act.

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