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U.S. Citizenship  
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Services

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FILE:

MSC 02 170 61614

Office: EL PASO

Date:

OCT 31 2007

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. 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, El Paso, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish that he satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act. The director also 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 asserts that denial of the applicant's application is contrary to 8 C.F.R. § 245a.3(b)(4)(i)(A), and that the applicant maintains he has "in fact been in the U.S. illegal [sic] prior to 1982." Counsel submits additional documentation in support of the appeal.

Under section 1104(c)(2)(E)(i) of the LIFE Act ("Basic Citizenship Skills"), an applicant for permanent resident status must demonstrate that he or she:

- (I) meets the requirements of section 312(a) of the Immigration and Nationality Act (8 U.S.C. § 1423(a)) (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or
- (II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

Under section 1104(c)(2)(E)(ii) of the LIFE Act, the Attorney General may waive all or part of the above requirements for aliens who are at least 65 years of age or developmentally disabled.

The applicant, who was 40 years old at the time he took the basic citizenship skills test and provided no evidence to establish that he was developmentally disabled, does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act. Further the applicant does not satisfy the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because he does not meet the requirements of section 312(a) of the Immigration and Nationality Act (the Act). An applicant can demonstrate that he or she meets the requirements of section 312(a) of the Act by "[s]peaking and understanding English during the course of the interview for permanent resident status" and answering questions based on the subject matter of approved citizenship training materials, or "[b]y passing a standardized section 312 test . . . by the Legalization Assistance Board with the Educational Testing Service (ETS) or the California State Department of Education with the Comprehensive Adult Student Assessment System (CASAS)." 8 C.F.R. § 245a.3(b)(4)(iii)(A)(1) and (2).

The regulation at 8 C.F.R. § 245a.17(b) provides that an applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the interview, shall be afforded a second opportunity after six months (or earlier at the request of the applicant) to pass the tests or submit evidence as described in paragraphs (a)(2) or (a)(3) of this section.

The record reflects that the applicant was interviewed twice in connection with his LIFE application, first on February 18, 2002 and again on September 16, 2004. On both occasions, the applicant failed to demonstrate a minimal understanding of English and minimal knowledge of United States history and government.

Furthermore, the applicant has not provided evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1).

The applicant, however, could still meet the basic citizenship skills requirement under section 1104(c)(2)(E)(i)(II) of the LIFE Act, if he meets one of the criteria defined in 8 C.F.R. §§ 245a.17(a)(2) and (3). In part, an applicant must establish that he meets the following under 8 C.F.R § 245a.17:

- (2) has a high school diploma or general educational development diploma (GED) from a school in the United States; or
- (3) has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance. The course of study at such learning institution must be for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and the curriculum must include at least 40 hours of instruction in English and United States history and government.

The record does not reflect that the applicant has a high school diploma or a GED from a United States school, and therefore does not satisfy the regulatory requirement of 8 C.F.R. § 245a.17(a)(2).<sup>1</sup>

On appeal, counsel submits a February 18, 2004 unsigned letter, purportedly from [REDACTED], an adult education specialist with St. Thomas Aquinas Church. The letter indicates that the applicant was attending GED classes and English language skills and training at the church. The letter did not indicate the beginning or ending date of the classes. Counsel also submits an additional document, also indicating that the applicant was attending adult education classes. The document is also unsigned, and does not indicate the institution at which the applicant apparently attended. The document shows an entry date of January 20, 2005.

The documentation submitted does not provide any confirmation that it is from “a state recognized, accredited learning institution,” and has a course content that includes any instruction on United States history and government as required by 8 C.F.R. § 245a.17(a)(3). Furthermore, 8 C.F.R. § 245a.17(a)(3) requires that the applicant submit certification on letterhead stationery from a state recognized, accredited learning institution either at the time of filing the Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview. In the instant case, documentation from a state recognized, accredited learning institution should have been submitted to Citizenship and Immigration Services (CIS) prior to, or at the time of, the applicant’s second interview on September 16, 2004. Therefore, as the documentation submitted by the applicant was subsequent to his second interview, the applicant has failed to meet this requirement.

As previously discussed, the applicant failed to meet the “basic citizenship skills” requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because at neither of his two interviews did he demonstrate a minimal understanding of the English language.

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<sup>1</sup> Counsel incorrectly cites 8 C.F.R. § 245a.3(b)(4)(i)(A), which is applicable to adjustment of status under the legalization provisions of subpart A of Part 245a.

Therefore, the applicant does not satisfy either alternative of the "basic citizenship skills" requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act. Accordingly, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

The director further determined that the applicant failed to establish that he resided continuously in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

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 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).

During his LIFE Act adjustment interview on February 18, 2004, the applicant stated that he first entered the United States in January 1980. The applicant further stated that he lived in San Ysidro for approximately eight months before moving to Chihuahua City and then to El Paso, Texas, where he worked cleaning yards, selling burritos and working as a mechanic. The applicant stated that, although records show that he was married in Mexico in 1984, he did not return there until 1987, and that his brother stood in as his proxy during the ceremony. The applicant submitted documentation on appeal that corroborates his statement. The applicant denied that his wife had visited him in the United States.

On his Form I-687, Application for Status as a Temporary Resident, the applicant stated that he worked as a laborer doing yard work from November 1981 to 1983, as a sales person in a factory outlet from

November 1983 to September 1984, and at ██████████ Construction from January 1985 to November 1990. This statement appears to contradict the applicant's September 9, 1993 sworn statement, in which he stated that he had been self-employed in various businesses from 1981 to the date of the statement.

The applicant also stated on his Form I-687 application that he lived ██████████ in El Paso from February 1985 to November 1990. The applicant did not identify any residences at which he lived prior to that date. In a September 9, 1993 sworn statement, the applicant stated that he lived at ██████████ in El Paso from October 1981 to October 1990, and also at ██████████ in El Paso from February 1985 to October 1990. The applicant stated that he was a "co-habitant" at these residences and shared in the cost of groceries and utilities. The applicant did not identify anyone with whom he lived during this time and did not explain his dual residences from February 1985 to October 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. An August 18, 1993 letter from ██████████, in which he verified that he had known the applicant since 1980. ██████████ stated that the applicant "has been selling our workers food and runs errands" occasionally. ██████████ did not state how long the applicant had been selling food or running errands for the company, the circumstances surrounding his initial acquaintance with the applicant, or how he dated his knowledge of the applicant. In a February 15, 2005 letter, ██████████ certified that the applicant had been an acquaintance for the past 25 years; however, he again did not indicate the circumstances of their initial meeting or how he dated his relationship with the applicant.
2. An August 18, 1993 letter from ██████████, in which he stated that he had known the applicant since early 1981, when the applicant was living at ██████████ in El Paso. ██████████ stated that the applicant came by his business to sell breakfast to employees and also performed some errands for the company. ██████████ did not state how he dated the applicant's visits to the company.
3. An envelope bearing a canceled postmark of March 24, 1981 and addressed to the applicant at ██████████ in El Paso. We note that this date is prior to the date the applicant stated that he began living at this address. 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).
4. An August 16, 1993 letter from ██████████, in which she stated that the applicant lived with her and her sister from October 1981 to November 1989. ██████████ listed her current address as ██████████ in El Paso; however, she did not state the address that she shared with the applicant. This statement also appears to conflict with the applicant's September 9, 1993 sworn statement in which he stated that he lived at ██████████ in El Paso from October 1981 to October 1990.
5. An August 24, 1993 affidavit from ██████████, in which he stated that, to his personal knowledge, the applicant had lived in El Paso since October 1981. The affiant stated that he met the applicant at the place where he worked, and that the applicant would go to the car dealer and

sell burritos. The affiant did not state how he dated the applicant's initial visits to the car dealership. Additionally, in an August 16, 1993 notarized statement, [REDACTED] stated that he had known the applicant since November 1981.

6. Two receipts from Economy Furniture Company in El Paso dated in November and December 1981. However, no name appears on the documents.
7. A February 17, 2004 notarized statement from [REDACTED], in which he stated that he had known the applicant since 1981, and that the applicant took care of all the "mechanic problems" with his vehicle.
8. A copy of a security agreement from McMahans Furniture Company showing the applicant as the customer with an address at [REDACTED] in El Paso. The agreement is dated September 4, 1982; however, the version date of the form is January 1993.
9. An August 15, 1993 affidavit from [REDACTED], in which he stated that he cuts the applicant's hair, and can attest to the applicant's presence in El Paso, Texas since January 1983.
10. An August 19, 1993 affidavit from [REDACTED] in which she stated that she had known the applicant since 1983, and that he would do odd jobs such as mowing lawns and cleaning yards.
11. A receipt from El Paso Gun Exchange, which shows the applicant as the purchaser. The date on the document is April 27, 1983; however, the year has been altered.
12. An August 14, 1993 letter from El Paso Factory Outlet Tire Corporation signed by [REDACTED] the general manager. [REDACTED] stated that the applicant worked for the company "during the time of November 1983 and September 1984" as a "casual laborer and temporary helper for the loading and unloading of trailers." It cannot be determined from [REDACTED]'s statement whether the applicant worked for the company from November 1983 to September 1984 or only in the stated months. [REDACTED] did not state whether the information regarding the applicant's employment was taken from company records and did not state the applicant's address at the time of his employment. 8 C.F.R. § 245a.2(d)(3)(i). Additionally, the applicant stated on his Form I-687 application that he worked as a salesman, while [REDACTED] stated that the applicant worked as a casual laborer.
13. A June 10, 1984 rental receipt showing the name of the remitter as [REDACTED]. The receipt also contains the name of [REDACTED]. No address is shown for the company or the renter. The applicant also submitted a similar receipt dated June 10, 1985. We note that the 1985 receipt number is only one digit higher than the 1984 receipt, suggesting that they were written during the same time frame.
14. A May 15, 1984 receipt for the applicant from the office of Dr. James Sabal.
15. An envelope addressed to the applicant at [REDACTED] in El Paso with a postmark of 1984.
16. A copy of a January 1, 1985 receipt from Sedgwick Sales, Inc., showing the applicant as the customer but not showing an address. However, the year in the date on the document has been

altered. The applicant also submitted a copy of the Lifetime Replacement Guarantee from the company with dates in 1985.

17. An August 16, 1993 sworn statement from [REDACTED] in which he stated that the applicant worked for his company from 1985 to 1990, cleaning houses and yards. [REDACTED] stated that he paid the applicant \$60 per week in addition to room and board. [REDACTED] did not state whether the information he provided was taken from company records or the address at which the applicant lived at the time of his employment. 8 C.F.R. § 245a.2(d)(3)(i). This statement also conflicts with that of [REDACTED] in which she stated that the applicant lived with her and her sister from October 1981 to November 1989. The applicant submitted no documentation to explain this inconsistency. *Matter of Ho*, 19 I&N Dec. at 591-92.
18. A copy of a July 3, 1987 receipt from [REDACTED]. The name on the receipt does not appear to be that of the applicant.
19. Two receipts from Restaurant-Bar Hacienda Del Rey, which show the applicant as the waiter. The receipts are dated March 3 and May 15, 1987.
20. An August 16, 1993 sworn statement from [REDACTED], in which she stated that the applicant was in Juarez, Mexico for seven days in December 1987 before returning to the United States.
21. A receipt from "Reach for a Star" indicating that the applicant received it. Although the receipt does not contain a provision for a date, the date of February 2, 1988 is written on the document.
22. A February 20, 1988 receipt from Quality Tire and Service in El Paso for customer [REDACTED]
23. A March 22, 1988 receipt from F&S Fashions in Los Angeles. The name on the receipt is [REDACTED] however, there is nothing else to indicate that it refers to the applicant nor does it show an address for the buyer.

A copy of a retail buyers order and invoice from Krystal Motors is not dated, but shows the applicant as accepting the contract on behalf of Krystal Motors. According to the applicant's Form I-687 application, he became a car salesman for Krystal Motors in January 1993. The applicant also submitted a certificate of title for a vehicle with a transfer of title on July 24, 1986. However, his name does not appear on the title and there is nothing on the document that indicates that the applicant was involved in the sale of the vehicle.

The applicant stated during his LIFE Act adjustment interview on February 18, 2004, that after his 1980 initial entry, he did not travel to Mexico until December 1987. The applicant also denied that his wife had traveled to the United States at any time. However, the applicant indicated on his Form I-687 application and on his Form I-485 application that he had a daughter born in Mexico in 1986.

The applicant submitted documentation with dates altered to reflect that they were executed during the requisite period. Additionally, the statements of [REDACTED] and [REDACTED] provide conflicting information regarding the applicant's residency during the qualifying period. Accordingly, given the unresolved discrepancies in the record, it is determined that the applicant has failed to establish by a preponderance of the evidence that the applicant resided continuously in the United States in an unlawful status from prior to January 1, 1982 through May 4, 1988.



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