

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

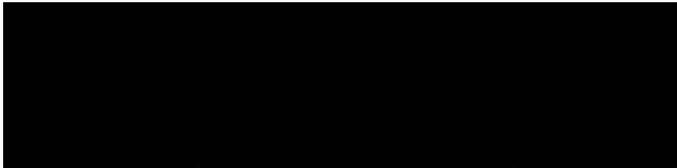
**PUBLIC COPY**

U.S. Department of Homeland Security  
20 Massachusetts Ave. N.W. Rm. 3000  
Washington, DC 20529-2090  
MAIL STOP 2090



U.S. Citizenship  
and Immigration  
Services

L2



FILE:



Office: MEMPHIS

Date:

**DEC 01 2008**

MSC 01 307 60600

IN RE:

Applicant:



PETITION: 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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits [or Records] Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to be "John F. Grissom".

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Memphis, Tennessee, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982, through May 4, 1988, and that he maintained continuous physical presence in the United States during the period from November 6, 1986, through May 4, 1988, as required under section 1104(c)(2)(B) and (C) of the LIFE Act.

On appeal, counsel for the applicant submits a brief.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish his continuous unlawful residence in the United States from before January 1, 1982, through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986, through May 4, 1998.

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: An alien shall be regarded as having resided continuously in the United States if 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.

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 its amenability to verification. *See* 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 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.

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, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), in or about May 1990. The applicant indicated on that application, that he had initially entered the United States without inspection on March 10, 1981 and that he had departed the United States on two occasions - from October 20, 1997<sup>1</sup> to October 31, 1987 for "pleasure/get married," and from September 1, 1987 to September 20, 1987 for "pleasure." He also indicated that he had two children born in Mexico on September 20, 1985 and September 30, 1986. In support of his Form I-687, the applicant submitted documentation dated May 30, 1990, including:

1. Similar fill-in-the-blank affidavits from [REDACTED] and [REDACTED] stating that the applicant had lived in Dallas and San Antonio, Texas, since an unspecified date in 1982.
2. Three employment letters. One, from [REDACTED] of [REDACTED] Contractors, states that the applicant was employed from "April 15, 1981 through October 15, 1987;" however, the month of "October" was crossed out and "August" was inserted in different hand-writing. Another, from [REDACTED] of [REDACTED] Plumbing Service, states that the applicant had been employed since February 1988. The third, from

---

<sup>1</sup> The "9" in "1997" is apparently a typographical error since the Form I-687 was signed by the applicant in May 1990. It is further noted that on a Form G-325A, signed by the applicant on June 30, 2001, he indicated that he had been married in Mexico on October 27, 1984.

[REDACTED] of [REDACTED] b., states that the applicant was employed from September 1987 to January 1988.

The applicant was interviewed on October 7, 1993. At that time, the applicant stated he had first come to the United States on March 18, 1981 (not March 20, 1981), and that he had departed the United States twice – during the month of August 1987, and again during the month of September 1987. At interview, the applicant provided documentation relating to his presence in the United States since in or after 1990, as well as the following additional documentation regarding his residence in the United States from prior to January 1, 1982, through May 4, 1988:

3. Fill-in-the-blank affidavits from his brother, [REDACTED], stating that the applicant had lived with him in the United States since 1981; and [REDACTED] stating that he had known the applicant since 1985 and that the applicant departed the United States and returned from Mexico in September 1987.

The applicant filed the current Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on August 3, 2001. In support of Form I-485, the applicant resubmitted documentation previously provided, additional documentation regarding his presence in the United States since in or after 1990, as well as the following new evidence concerning his residence in the United States during the requisite time period:

4. A photocopy of an envelope addressed to the applicant in Dallas, Texas, postmarked March 24, 1984.

The applicant was interviewed in connection with his Form I-485 on January 14, 2002. On April 21, 2006, the director issued a Notice of Intent to Deny (NOID) the applicant's Form I-485. The director noted that at the time of his interview, the applicant stated he initially entered the United States in March 1981, returned to Mexico three years later to get married, and reentered the United States six months later in November 1984. The director also noted that the applicant further stated that he again left the United States to return to Mexico in 1987 for about three months.

In response to the NOID, counsel for the applicant submitted a letter, dated May 16, 2006, stating, in part, that the applicant left the United States for a brief period in 1984 in order to get married.

On June 19, 2006, the director denied the application. The director noted that the applicant had provided contradictory statements regarding his absences from the United States, and had not established that he first entered the United States prior to January 1, 1982.

The applicant, through counsel, filed a timely appeal from the director's denial decision on July 18, 2006. On appeal, counsel asserts that the applicant submitted evidence to demonstrate that he resided continuously in the United States throughout the requisite period and that, although uncertain of the exact dates, the applicant contends that both of his trips from the United States were brief, casual and innocent. Counsel states that although one trip was longer than the other, "it is our contention that

these trips were brief, casual and innocent and that even though the time frame was close to the 180 limit, by requiring [the applicant] to prove the exact dates of his departure and subsequent return does not comport with the Congressional intent of the enactment of the Life Act.”

The issue in this proceeding is whether the applicant has demonstrated that he continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States during the period from November 6, 1986, through May 4, 1988.

In an attempt to establish his continuous unlawful status from before January 1, 1982, through May 4, 1988, and continuous physical presence in the United States during the period from November 6, 1986, through May 4, 1988, the applicant provided the documentation noted in Nos. 1 through 4, above, of which only two attest to the applicant’s presence in the United States prior to January 1, 1982 - the affidavit from the applicant’s brother, and the employment letter from [REDACTED]. The affidavit from the applicant’s brother, as well as those from [REDACTED] and [REDACTED], are vague as to how often and under what circumstances they had contact with the applicant during the requisite period, and lack details that would lend credibility to their claims. As such, they can be afforded only minimal weight as evidence of the applicant’s residence and presence in the United States throughout the requisite period. Furthermore, the employment letter from [REDACTED] does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the letter does not provide the applicant’s address at the time of his employment. The employment letters from [REDACTED] and [REDACTED], attesting to the applicant’s employment in the United States from September 1987 to May 1990, also suffer from several deficiencies with regard to the regulation concerning employment letters cited above.

Finally, the discrepancies noted in the applicant’s testimony and submissions regarding his absences from the United States have not been adequately explained on appeal. The dates and lengths of the applicant’s absences from the United States remain unclear. The applicant claimed in May 1990 on his Form I-687 that he had been absent on two occasions – in September and October 1987; in October 1993 at an interview that he had absent on two occasions – in August and September 1987; and at an interview in January 2002 that he had been absent for about six months in 1984 and about 3 months in 1987. It is further noted that the applicant’s children were born in Mexico in September 1985 and October 1986, but there is no indication in the record that the applicant’s spouse was in the United States in or about December 1985 and February 1986 (at the time of the children’s conception) – therefore it appears that the applicant may also have been in Mexico during those time periods as well.

Doubt cast on any aspect of the applicant’s evidence reflects on the reliability of the petitioner’s remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988).



While not directly dealt with in the director's decision, there must be a determination as to whether the applicant's prolonged absences from the United States were due to "emergent reasons." 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." At no point has the applicant put forth any reasons or any valid basis for his extended departures, as attested to at his most recent interview in January 2002, from the United States during the requisite time period, or any evidence of his having intended to return to the United States within 45 days of his departures. Accordingly, in the absence of evidence that the applicant intended to return within 45 days after his departures, it cannot be concluded that emergent reasons "which came suddenly into being" delayed or prevented the applicant's return(s) to the United States within the 45-day period allowed.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5<sup>th</sup> ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

The AAO finds that the applicant has failed to establish, by a preponderance of the evidence, that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, and that he maintained continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

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