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FILE:

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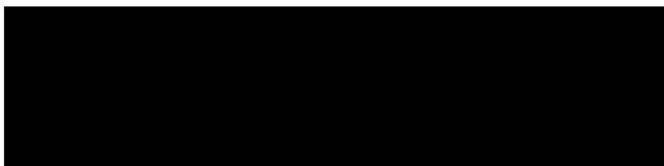
IN RE: Applicant:



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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits 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.

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 in Dallas, Texas. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he maintained continuous residence in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, the applicant asserts that his absence from the United States from December 1987 to July 1988 was due to a family emergency, which prevented him from returning to the United States within the 45 days allowed in the regulation, and should not be deemed as having interrupted his continuous residence in the United States.

To be eligible for adjustment to permanent resident status under the LIFE Act an applicant must establish his or her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“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 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. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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, a native of Mexico, filed his application for permanent resident status under the LIFE Act (Form I-485) on September 27, 2001.

In a Notice of Intent to Deny (NOID), issued on June 1, 2005, the director cited the applicant’s testimony at his LIFE legalization interview on August 5, 2002, that he departed the United States for Mexico in December 1987 and re-entered the United States in May 1988, and information on the applicant’s Form I-687 (application for status as a temporary resident) dated May 24, 1990, in which the applicant stated that he departed the United States and traveled to Mexico for family visit in December 1987 and returned to the United States in July 1988. The director concluded that this absence from the United States interrupted the applicant’s “continuous residence” in the United States during the statutory period of January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

On June 30, 2005, the applicant responded to the NOID with a letter indicating that his mother was critically ill and needed his assistance during the time in question, but that he considered the United States his real home.

On September 5, 2007, the director issued a decision denying the application. The director indicated that the applicant had submitted no evidence to support his claim that emergent reasons prevented him from returning to the United States within 45 days.

On appeal, the applicant reasserts that the reason for his extended absence from the United States from December 1987 to May or July 1988 was because of his mother’s illness, that she had surgery which resulted in some complications that required him to stay and take care of her. The applicant indicates that he had intended to travel to Mexico to visit his family over the Christmas holidays in 1987 and return to the United States no later than January 31, 1988. In early

January, however, his mother was very ill, underwent surgery, had serious complications, and ended up partially paralyzed. The applicant indicates that his mother needed 24-hour a day care, and so he stayed to take care of her during the recovery period.

In support of the appeal the applicant submits a letter from [REDACTED] dated September 24, 2007, from Santa Maria del Rio, Mexico, indicating that the applicant's mother had been her patient for about 25 years, that the applicant's mother has a chronic disorder – hypertension and a cardiac problem – and that she underwent surgery for a hernia in January 1988. The applicant also submits two letters by [REDACTED], dated September 14, 2007, and [REDACTED], dated September 10, 2007, both from Santa Maria del Rio, Mexico, stating that the applicant stayed in the area from January or February 1988 to July 1988 because his mother was sick and needed his care.

The applicant's absence from the United States – approximately one-half year in length – far exceeded the 45-day maximum prescribed in the regulation at 8 C.F.R. § 245a.15(c)(1). Absences of such duration interrupt an alien's continuous residence in the United States unless (s)he can show that a timely return to the United States could not be accomplished due to emergent reasons. While the term "emergent reasons" is not defined in the regulations, there is some pertinent case law. In *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), the Board of Immigration Appeals held that *emergent* means "coming unexpectedly into being."

While the applicant indicated that his mother suffered serious complications following the surgery – paralysis of one half of her body – the letter from [REDACTED] made no mention of such complication. Also, the letter from [REDACTED] did not provide details as to exactly when the surgery was performed, how long the applicant's mother was hospitalized, and how long the recovery period lasted. Based on these deficiencies, the letter from [REDACTED] does not support the applicant's claim that emergent reasons prevented him from returning to the United States from Mexico in 1988 within 45 days. Nor has the applicant provided a credible explanation of why his five brothers who reside in Mexico could not have taken over the responsibility to care for their mother. Considering the paucity of evidence in the record, the AAO concludes that the applicant has failed to establish that emergent reasons, within the meaning of 8 C.F.R. § 245a.15(c)(1), prevented his return to the United States from Mexico in 1988 within the 45-day period allowed in the regulation. Accordingly, the applicant has failed to establish his continuous residence in the United States from before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

Beyond the decision of the director, the letters from [REDACTED] and [REDACTED], both residents of Santa Maria del Rio, Mexico, attesting to the applicant's trip to Mexico in 1988, have no probative value as evidence of the applicant's presence and continuous residence in the United States from before January 1, 1982 through May 4, 1988. The authors provide information of the applicant's trip to and stay in Santa Maria del Rio, Mexico, from January or February 1988 to July 1988, but nothing about the applicant's residence in the United States during the requisite period for LIFE legalization. The record also

includes five affidavits dated in May 1990 from individuals who claim to have resided with, employed, or otherwise known the applicant in Texas during the 1980s. The affidavits are similar in format and provide few details about how the affiants met the applicant and the extent of their interaction over the years. The information in the affidavits is general in nature and could just as easily have been provided by the applicant. The affidavits are not supplemented by any documentation – such photographs or letters – showing a personal relationship between the applicant and any of the affiants during the 1980s. Thus, separate and apart from the break in continuous residence from December 1987 to May 4, 1988, the evidence of record is insufficient to demonstrate that the applicant was continuously resident in the United States during prior years back to 1981. On this ground as well, therefore, the applicant has failed to establish his eligibility for legalization under the LIFE Act.

For the reasons discussed above, the applicant has failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

The appeal will be dismissed, and the application denied.

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