

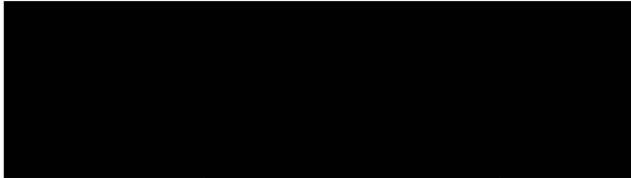
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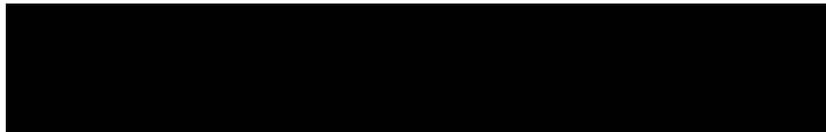
Office: DALLAS, TEXAS

Date: **MAR 21 2008**

MSC 02 204 64684

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.

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 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 provide sufficient evidence of his unlawful residence in the United States between December 23, 1985 and May 4, 1988.

On appeal, the applicant asserts that he entered the United States unlawfully in 1981 and resided in the United States continuously in an unlawful status thereafter.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their 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).

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. 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 residence under the LIFE Act (Form I-485) on April 22, 2002. In a Notice of Intent to Deny (NOID), dated July 12, 2005, the director noted that the photocopied passport pages in the record included a "Border Crosser" stamp from the U.S. Consulate in Monterrey, Mexico, on December 23, 1985, and multiple "U.S. Immigration" stamps in succeeding years which showed, in the director's view, that the applicant had maintained a residence in Monterrey and entered the United States legally to visit relatives. The director concluded that the evidence failed to establish that the applicant was unlawfully present in the United States between December 23, 1985 and May 4, 1988. The applicant was granted thirty days to submit additional evidence.

The applicant responded with a letter stating that he first arrived in the United States in January 1981, and settled in Houston, Texas, where he resided continuously until November 1989. The applicant indicated that he made his first trip back to Mexico in December 1985, and that he had a border crossing card from 1985 to 1994 which allowed him to visit relatives in Mexico. The applicant also submitted a copy of a letter from [REDACTED] of Houston, Texas, identified as the owner of [REDACTED], who stated that he employed the applicant as a carpenter's assistant from July 1985 to November 1989.

In a decision dated December 27, 2005, the director denied the application. The director determined that the applicant's passport pages clearly showed that he was a legal border crosser starting on December 23, 1985, and therefore failed to establish his continuous unlawful presence in the United States from December 23, 1985 through May 4, 1988. With respect to the letter from [REDACTED], the director noted that Texas state records did not reveal an incorporated company by this name and that the letter provided no phone number for contacting purposes.

On appeal the applicant reiterates his claim to have entered the United States in 1981, and claims that he misrepresented his situation to the U.S. Consulate in Monterey to obtain a border crossing stamp in 1985 by stating that he resided in Mexico, rather than in Texas. The applicant asserts that the reason Texas state records did not include a company by the name of [REDACTED] is that it was a sole proprietorship, not a corporation.

The applicant has failed to submit sufficient evidence to overcome the director's ground for denial. Beyond the decision of the director, the AAO determines that the applicant has failed to establish that he was continuously resident in the United States in an unlawful status for any of the requisite period for LIFE legalization – from before January 1, 1982 through May 4, 1988.

There is no contemporaneous documentation from the years 1981-1988 which demonstrates that the applicant resided in the United States during that time. The only contemporaneous documentation showing that the applicant was even present in the United States during the 1980s are the stamps in his passport showing that he was granted a "Mexican Border Crossing Identification Card and B-1/B-2 Nonimmigrant Visa" by the U.S. Consulate General in Monterey, Mexico, on December 23, 1985, and that he subsequently entered the United States on that card and visa in 1987 and 1989 (as well as in the 1990s). As far as the record shows, these were all legal entries into the United States by a Mexican national who did not reside in the United States.

The record includes the aforementioned letter from the owner of [REDACTED] in Houston, Texas, stating that the applicant worked for the company as a carpenter's apprentice from July 1985 to November 1989. The record also includes a letter from [REDACTED] who states that the applicant worked for his house remodeling business – [REDACTED], also located in Houston – during the years 1981 to 1985 for \$150 per week, paid in cash. Neither of these letters is dated, though both appear to have been prepared long after the 1980s, and neither of the letters comports with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i), because they were not prepared in sworn affidavit form, do not identify the applicant's address during his time of employment, do not indicate whether the information was taken from company records, and do not indicate whether such records are accessible for review. Moreover, the two business owners have provided no documentary evidence of their own residence and presence in the United States during the years they claim to have employed the applicant.

The only other evidence of the applicant's residence in the United States during the requisite time period from 1981 to 1988 are four affidavits from acquaintances of the applicant which were prepared in 1996. As previously indicated, evidence must be evaluated not only by its quantity, but also by its quality. None of the affidavits has been supported by any documentation of the affiants' own presence in the United States during the years 1981-1988, which calls into question the basis of their knowledge that the applicant was resident and physically present in the United States during that time. Three of the four affiants do not claim to have known the applicant as far back as 1981. The one who does claim to have known the applicant since 1981, [REDACTED], provides few details about the basis of her recollection in 1996 (fifteen years later) that her acquaintance with the applicant dated from the specific year 1981, and the extent of her interaction with the applicant during the rest of the 1980s.

Thus, neither the employer letters nor the affidavits from acquaintances carry sufficient evidentiary weight to establish that the applicant entered the United States in 1981 and was continuously resident in the United States in an unlawful status from then through May 4, 1988. Moreover, the passport evidence of the applicant's legal entries into the United States, beginning in December 1985 and continuing into the 1990s, casts doubt on whether the applicant was in the United States in an unlawful status at any time between January 1, 1982 and May 4, 1988.

Based on the foregoing analysis, the AAO determines that the applicant has failed to establish his eligibility for permanent resident status under the LIFE Act. The applicant has not established 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 appeal will be dismissed.

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