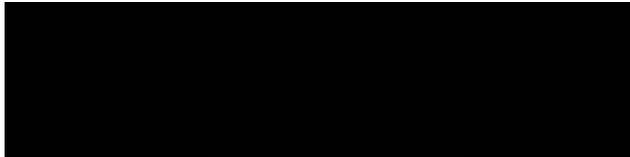


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**U.S. Citizenship
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Services**

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FILE: [REDACTED] Office: DALLAS Date: **MAR 27 2008**
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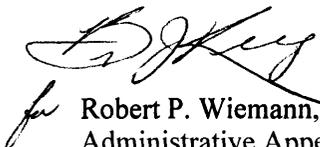
IN RE: Applicant: [REDACTED]

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:
[REDACTED]

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.


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

The district 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. This decision was based on the district director's determination that the applicant had exceeded the forty-five (45) day limit for a single absence from the United States during this period.

On appeal, counsel once again asserts the director ignored "the wealth of evidence appellant presented in support of his application, proving his continuous presence in the United States during the entire requisite time period." Counsel asserts that the applicant has explained the reason for the discrepancy between his statements and actual physical presence in the United States. Counsel argues that the director has not sought to verify the information in the letters and affidavits provided by the applicant.

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 that were most recently in effect before the date of the enactment of this Act shall apply.

"Continuous residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

Continuous residence. An alien shall be regarded as having resided continuously in the United States if:

(1) 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. [Emphasis added.]

On his Form I-687 application signed on March 27, 1990, the applicant listed his departures and returns to the United States during the requisite period as follows:

May 1982 to May 1982
September 1982 to October 1982
January 1986 to January 1986
July 1987 to September 1989

At item 33 of the Form I-687 application, the applicant listed his residences in the United States from January 1980 to June 1987 and from September 1989 to the present. At item 36 of the Form I-687 application, the applicant listed his employment from December 1980 to June 1987.

On his Form I-687 application signed on June 30, 1993, the applicant listed his departures and returns to the United States during the requisite period as follows:

May 1982 to June 1982
January 1987 to February 1987
May 1987 to August 1989

The record contains a Form for Determination of Class Membership dated and signed by the applicant on June 30, 1993. The applicant indicated on the form, "with exception of 27 months in 1987-1989" he has continuously resided in the United States in an unlawful status since prior to January 1, 1982. The applicant indicated he departed the United States on May 7, 1987, and did not return until August 1989. The applicant also indicated that he did not file an application for legalization on or before May 4, 1988, due to "lack of money, economy, out of country, and unable to return in time to apply."

At the time of his LIFE interview on July 1, 2003, the applicant was placed under oath and admitted in a signed statement that he first arrived in the United States in December 1977; departed the United States in 1983 and returned two months later; departed again in 1986 for four months; and departed again in 1987 and was in Mexico for a year.

On September 15, 2005, the director issued a Notice of Intent to Deny, which advised the applicant of his sworn statement and what he had indicated on his Form I-687 applications regarding his 1987 absence from the United States. The director also advised the applicant that his 1987 absence was in excess of 300 days and the applicant had not established that said absence was due to emergent reasons.

In response, counsel asserted that the discrepancy was "the result of a fraudulent *notario publico* who gave [the applicant] false direction when he was filling out his initial paperwork."

The director, in denying the application, noted that in response to the Notice of Intent to Deny, counsel asserted that the Citizenship and Immigration Services (CIS) was focusing on the inconsistencies of the dates on the forms submitted; that there were many documents showing evidence of presence during the required period, and that the applicant had submitted two affidavits from his landlord and employer, neither of which mention a period of absence. The director determined that the lack of information on the affidavits concerning the applicant's departure did not constitute irrefutable proof of presence. The director concluded that based on his sworn testimony coupled with the fact that he admitted to his 1987 absence on his Form I-687 applications, the applicant had not established eligibility to adjust to permanent resident status under the LIFE Act.

On appeal, as evidence to support the applicant's continuous residence in the United States, counsel submits copies of documents that were initially submitted with the applicant's LIFE application. Specifically:

- A letter dated May 24, 2002, from [REDACTED] of Gainesville, Texas, who indicated that he rented one of his properties, [REDACTED] to the applicant from 1980 to 1988. The affiant asserted that the applicant always paid his rent on time.
- An affidavit notarized May 7, 2002, from [REDACTED] of Fort Worth, Texas, who indicated that he has known the applicant since 1979 and attested to the applicant's Gainesville residence at [REDACTED] since that time.

An affidavit notarized May 9, 2002, from [REDACTED] of Gainesville, Texas, who indicated that he met the applicant in 1983 and attested to the applicant's Gainesville residence at [REDACTED] since that time.

A letter dated May 22, 2002, from [REDACTED] of Gainesville, Texas, who indicated the applicant was in his employ from December 1980 to June 1986. The affiant asserted "from 1986 to 1989 I know of him in our community."

- An affidavit from [REDACTED] of Gainesville, Texas, who indicated he has known the applicant since 1986. The affiant asserted that the applicant visited his home on several occasions and he has prepared the applicant's income tax returns for several years.

CIS has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, supra. In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, supra, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by counsel have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States from May 7, 1987, to May 4, 1988.

The affidavits from [REDACTED] and [REDACTED] have no probative value or evidentiary weight as the applicant, on his Form I-687 application, did not claim to have resided at this address prior to or during the requisite period.

The letter from [REDACTED] only serves to establish the applicant's residence in the United States through June 1986. [REDACTED] indicated he knew of the applicant in the community from 1986 to 1989, but he provided no details regarding the nature of his relationship with the applicant or the basis for his continuing awareness of the applicant's residence since July 1986.

[REDACTED] attested to have known the applicant since 1986, but provided no address for the applicant during the period in question. [REDACTED] indicated that he prepared the applicant's income tax returns for several years, but no mention of the years the tax returns were prepared or certified copies of said returns were provided by the applicant.

Counsel's assertion that a "fraudulent notario publico" gave the applicant false direction at the time he was filling out his initial paperwork is not supported by any evidence. The unsupported assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The record reflects that at item 50 on the Form I-687 application signed on March 27, 1990, it requested the name and address of the person preparing the form and it was left blank. The Form I-687 application dated June 30, 1993, was prepared by Servicios Migratorios Casita Maria, and the Form to Determine Class Membership was notarized by [REDACTED] Servicios Migratorios Casita Maria and Ms. [REDACTED]s were recognized by CIS as authorized and accredited representatives until November 19, 2004.

An absence of more than 45 days must be “due to emergent reasons” significant enough that the applicant’s return “could not be accomplished.” In other words, the reasons must be unexpected at the time of departure from the United States and of sufficient magnitude that they made the applicant’s return to the United States more than inconvenient, but virtually impossible. That was not the applicant’s situation in this case. The applicant’s continued stay in Mexico would appear to have been a matter of personal choice, not a situation that was forced upon him by unexpected events. The applicant’s extended absence from the United States – far beyond the 45 days allowed by 8 C.F.R. § 245a.15(c)(1) – was not “due to emergent reasons” outside of his control that prevented his from returning far sooner.

The applicant on three separate occasions has signed documentation which indicates he was outside of the United States for over a year during the requisite period. Accordingly, the applicant’s 1987 departure from the United States exceeded the 45-day period allowable for a single absence, as well as the 180-day aggregate total for all absences, and interrupted his “continuous residence” in the United States. The applicant has, therefore, failed to establish that he resided in the United States in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required by the statute, section 1104(c)(2)(B)(i) of the LIFE Act, and by the regulations, 8 C.F.R. §§ 245a.11(b) and 245a.15(c)(1).

Accordingly, the applicant 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.