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U.S. Citizenship
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FILE:



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Office: CHICAGO

Date:

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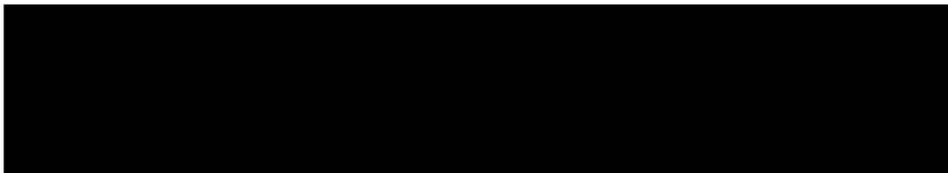
IN RE: Applicant:



APPLICATION:

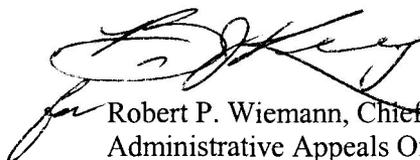
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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.


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 director in Chicago, Illinois. 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 demonstrate that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel asserts that the director did not adequately consider all of the documentary evidence provided by the applicant and thus failed to properly adjudicate the application.

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).

“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.” (Emphases added.)

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 who claims to have lived in the United States since 1976, filed his application for permanent resident status under the LIFE Act (Form I-485) on May 20, 2002.

On a Form I-687 (application for temporary resident status) he prepared in 1994 in conjunction with his application for class membership in the "CSS" or "LULAC" legalization class action lawsuit, the applicant listed the following addresses in the United States since his initial entrance into the country:

- [REDACTED] in Chicago, Illinois – October 1976 to December 1981.
- [REDACTED] in Chicago, Illinois – December 1981 to May 1986.
- [REDACTED] in Cicero, Illinois – May 1986 to the present (1994).

On the Form I-687 the applicant stated that his one and only absence from the United States after January 1, 1982 was a 15-day trip to Mexico for a family emergency from June 15 to 30, 1987. As evidence of his residence in the United States since 1976 the applicant submitted the following documentation with his Form I-687:

- An affidavit by [REDACTED], of [REDACTED] Upholstering Inc. in West Chicago, Illinois, dated August 16, 1993, stating that the applicant worked for his company from November 1979 to December 1984 as an upholsterer, and was paid in cash.

An affidavit by [REDACTED] owner of [REDACTED] General Construction Co. in Chicago, Illinois, dated November 12, 1993, stating that the applicant had been employed as an independent contractor from January 1985 to the present as a laborer and general helper. Mr. [REDACTED] indicated that the applicant worked between 10 and 25 hours/week (5 to 15 hours/week in the slower winter months), initially at a rate of \$30 for a full day's work and presently (1993) at \$50/day, always paid in cash.

A letter from [REDACTED] Administrative Assistant of Operations Service Systems in Chicago, dated April 5, 1993, stating that the applicant was employed briefly as a janitor from March 17, 1986 to April 25, 1986, at a pay rate of \$4.50/hour and \$180.00/week.

A letter from [REDACTED], Night Operations Manager of [REDACTED] Transport, Inc. in Chicago, dated October 5, 1993, stating that the applicant was employed (in an unstated position) from May 1986 through December 1988.

A letter by [REDACTED], Office Manager of Workforce Inc. (a company providing "industrial temporaries"), dated April 16, 1993, stating that the applicant was employed from January 21, 1989 to January 25, 1993.

- An affidavit by [REDACTED] a resident of Cicero, Illinois, dated November 13, 1993, stating that the applicant was a tenant in his building at [REDACTED] in Chicago from December 1981 to May 1986, paying \$200/month for rent and utilities.

An affidavit by [REDACTED], a resident of Cicero, dated November 16, 1993, stating that the applicant had been a tenant in his building at [REDACTED] from May 1986 to the present (1993), paying \$300/month for rent and utilities.

An affidavit by [REDACTED], a resident of Chicago, dated June 15, 1993, stating that she knew the applicant's sister, who introduced her to the applicant when he arrived from Mexico in 1976. The affiant stated that the applicant got a job at "Zenith Co." in Elk Grove Village in November 1976, helped her get a job in the same company in November 1977, and remained friends with her and her husband through the years since then. According to the affiant, the applicant had resided in the United States since 1976.

- An affidavit by [REDACTED], a resident of Cicero, dated June 15, 1993, stating that the applicant is his brother and that the two of them were employed in 1978 and 1979 by Pressure Concrete Construction Company at sites around the United States.
- An affidavit by [REDACTED], a resident of Chicago, dated June 15, 1993, stating that the applicant is his uncle and that the two of them were employed in 1985 and 1986 by Operations Service Systems in Chicago, though the company was only able to confirm the applicant's employment in March and April 1986.

At the time he submitted his Form I-485 in 2002 the applicant submitted the following additional evidence of his residence in the United States:

A Social Security Statement sent to the applicant at his address in Chicago, dated March 20, 2002, listing his earnings year by year from 1976 to 2000. The Statement did not list any earnings for the years 1980 to 1983, or 1989.

Another affidavit by [REDACTED], of [REDACTED] Upholstering, Inc. in Chicago, reiterating that the applicant worked in his upholstery shop as an upholsterer from November 1979 to December 1984, and was always paid in cash.

- Another affidavit by [REDACTED], owner of [REDACTED] General Construction Co. in Chicago, dated March 8, 2002, stating that he employed the applicant as a laborer from January 1985 to November 1996. Mr. [REDACTED] indicated that the applicant worked between 10 and 25 hours/week (5 to 15 hours/week in the winter) and earned \$50 for a full day's work.

Another affidavit by [REDACTED], a resident of Cicero, dated March 8, 2002, reiterating that the applicant was his tenant from December 1981 to May 1986 in the second floor apartment of his building at [REDACTED] in Chicago. The affidavit was supplemented by a Settlement Statement showing that Mr. Rubio purchased the rental property on March 30, 1981.

- A letter from [REDACTED], a resident of Cicero, dated March 23, 2002, stating that he was a co-worker of the applicant's at Dawes Transport, Inc. during the time the applicant was employed from May 1986 to December 1988.

An affidavit by [REDACTED], a resident of Cicero, dated March 10, 2002, stating that he was a co-worker of the applicant's at [REDACTED] from the affiant's starting date in July 1987 until he left the company in August 1995.

An affidavit by [REDACTED], a resident of Chicago, dated March 8, 2002, stating that he was a co-worker of the applicant's at [REDACTED] Upholstering, Inc. from November 1979 to December 1984.

In December 2004 the director issued a Notice of Intent to Deny (NOID) which cited a Request for Evidence (RFE) that was issued on February 19, 2003, stated that the applicant had not responded to the RFE, and indicated that the affidavits, letters, and Social Security Statement in the record were insufficient to establish the applicant's continuous residence in the United States from January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

On March 7, 2005, the director issued a Notice of Decision denying the application, stating that the applicant had not responded to the NOID and that the evidence of record failed to establish the applicant's continuous residence in the United States from January 1, 1982 through May 4,

1988. With regard to the Social Security Statement, the director did not mention the lack of any recorded earnings for the years 1980 to 1983, but declared that the “low earnings” for the years 1984 to 1988 “suggest[ed]” that the applicant was “not continuously living in the United States during these years.”

On appeal counsel asserts that the applicant did respond to both the RFE and the NOID, and submits photocopies of both responses with date stamps indicating that they were received by the district office on April 4, 2003 and January 27, 2005, respectively. Counsel submitted copies of the additional documentation submitted with the responses to the RFE and the NOID, which included the following evidence of the applicant’s residence in the United States:

- A Western Union telegraphic money order receipt, with a handwritten notation of 9-11-1976, which appears to identify the applicant (at [REDACTED]) as the sender of money to a recipient in Mexico.
- A form letter from the District Director of the Internal Revenue Service (IRS) in Chicago, to the applicant at [REDACTED] in Chicago, with a handwritten date of October 5, 1979, replying to an inquiry about the applicant’s Form 1040A federal income tax return for the year 1977.
- A Report of Individual Income Tax Examination Changes (Form 1902-B) issued by the IRS to the applicant on August 13, 1979, advising him of adjustments to his income and deduction amounts for the tax year 1977.

Counsel contends that the director did not adequately consider all of the evidence submitted by the applicant in adjudicating his application for LIFE legalization. In counsel’s view the evidence establishes the applicant’s continuous residence in the United States during the requisite years for LIFE legalization.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

The Social Security Statement issued to the applicant in 2002 lists earnings for the applicant in progressively increasing amounts from 1976 to 1979, does not list any earnings for the years 1980 to 1983, lists earnings in varying amounts from 1984 to 1988, lists no earnings for 1989,

and then lists earnings in varying amounts for every year from 1990 through 2001. Thus, the applicant clearly resided in the United States at least part of the time in the years 1976-1979, which was before the requisite period for LIFE legalization, as well as at least part of the time in the years 1984-1988, which was during the requisite period for LIFE legalization. The director cited the “low earnings” for the years 1984-1988 (they were lower in each of those years than they were for the earlier years of 1978 and 1979, as well as the later years of 1990-2001) as “suggesting” that the applicant did not maintain continuous residence in the United States during that time period. The record includes affidavits and letters from four employers who state that they employed the applicant during sometimes overlapping time periods between 1984 and 1988. One of the letters – from the administrative assistant of Operations Service Systems – meets all of the evidentiary requirements set forth in 8 C.F.R. § 245a.2(d)(3)(i), though it admittedly covered only a brief period of employment for the applicant in March and April 1986. One of the companies – Frutos General Construction Co. – acknowledged that it paid the applicant in cash for part-time work he performed during the years 1985-1988, which might account for the relatively “low earnings” recorded in the applicant’s Social Security Statement for those years. Based on the foregoing evidence, the AAO is persuaded, by a preponderance of the evidence, that the applicant resided continuously in the United States during the years 1984-1988.

As previously noted, however, the applicant’s Social Security Statement does not indicate any earnings during the years 1980-1983. The only evidence in the record that the applicant was residing in the United States during those years are: (1) the affidavits by [REDACTED] in 1993 and 2002 that the applicant worked at his upholstery business from November 1979 to December 1984; (2) the affidavit by [REDACTED] that he was a co-worker of the applicant’s at Isaac’s Upholstering, Inc. from November 1979 to December 1984; (3) the affidavit by [REDACTED] in 1993 that she met the applicant when he arrived in the United States in 1976 and knew that the applicant had resided in the United States since then; and (4) the affidavits by [REDACTED] in 1993 and 2002 that the applicant was his tenant from December 1981 to May 1986. The affidavits by [REDACTED] do not comport with the regulatory requirements for employment letters, as specified 8 C.F.R. § 245a.2(d)(3)(i), because they do not provide the applicant’s address at the time of employment, do not declare whether the information was taken from company records, and do not indicate whether such records were available for review. While [REDACTED] claims to have been the applicant’s co-worker at Isaac’s Upholstering, Inc. through the first half of the 1980s, his affidavit provided no further information about the applicant, such as where he lived and the nature and extent of his interaction with the affiant, during that five-year period. The affidavit by [REDACTED] focused solely on the applicant’s arrival and first couple of years in the United States in the 1970s, providing no information whatsoever about the applicant’s life in the United States, such as where he lived and where he worked, during the 1980s – the critical years for legalization under the LIFE Act. The affidavit by [REDACTED] likewise provides no information about the applicant’s life in the United States except for the single detail that he rented an apartment in Chicago from late 1981 to mid-1986. None of the above affidavits was accompanied by any evidence from the affiants – such as photographs or letters from the 1980s, or business records from [REDACTED] relating to

the applicant, or a rental agreement between [REDACTED] and the applicant – which documents the affiants' relationship with the applicant in the United States during the first half of the 1980s.

In view of these myriad infirmities, the AAO determines that the affidavits by [REDACTED], [REDACTED], and [REDACTED] have little probative value as evidence of the applicant's continuous residence in the United States during the early 1980s.

In addition to the evidentiary shortcomings discussed above, the AAO notes the information provided in the applicant's Form I-687 that he has two daughters who were born in Mexico on October 28, 1979 and June 9, 1983. While asserting on the same form that after his initial entry into the country in 1976 he was absent from the United States only once – in June 1987 – the birth of two children in Mexico during that time period implies that the applicant may in fact have departed the United States more than once. The applicant has provided no explanation for the birth of his children in Mexico at two periods of time which he claims to have spent entirely in the United States. The second birth, in 1983, was during the last of four consecutive years in which the applicant had no recorded earnings on his Social Security Statement, which suggests that he may have been absent from the United States for much or all of that year, as well as the preceding years of the early 1980s. Any absence from the United States of more than 45 days after January 1, 1982 would have exceeded the maximum time allowable under 8 C.F.R. § 245a.15(c)(1), thereby interrupting the applicant's continuous residence in the United States, unless he could show that "emergent reasons" prevented his return within 45 days.

In conclusion, the lack of earnings in the applicant's Social Security Statement for the years 1980-1983, the almost total absence of details in the affidavits by [REDACTED], [REDACTED], and [REDACTED] about the applicant's life in the United States during the early 1980s, and the birth of the applicant's daughter in Mexico in June 1983, cast a long shadow of doubt over the applicant's claim to have maintained continuous residence in the United States during the years 1980-1983 – the last two of which are essential for LIFE legalization.

Based on the foregoing analysis, the AAO concludes that 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 to be eligible for legalization 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, and the application denied.

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