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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

**U.S. Citizenship
and Immigration
Services**

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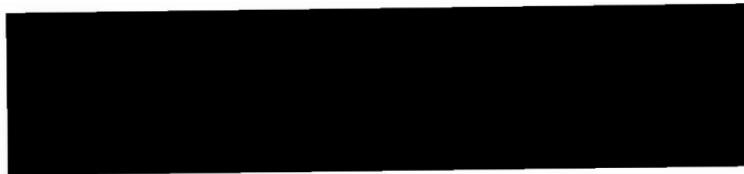
Applicant:



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 forwarded to the U.S. Citizenship and Immigration Services National 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and 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, El Paso, Texas. The case came before the Administrative Appeals Office (AAO) on appeal. The AAO remanded the matter for the issuance of a notice of intent to deny (NOID) and a new decision. The director issued a NOID and entered a new decision to deny. The director certified the matter to the Administrative Appeals Office (AAO) for review. The AAO affirms the director's decision to deny the application.

The director denied the application because he found that the evidence in the record failed to demonstrate that it is more likely than not that the applicant resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988. He also denied the application because the applicant failed to establish that he had satisfied the basic citizenship skills requirement described at section 1104(c)(2)(E) of the LIFE Act.

The applicant did not file a brief or other evidence with the AAO during the 33 days following the date of the director's February 3, 2009 denial.

The AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO's *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.¹

An applicant for permanent resident status under section 1104 of the LIFE Act must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date through May 4, 1988. *See* LIFE Act § 1104(c)(2)(B) and 8 C.F.R. § 245a.11(b).

The regulation at 8 C.F.R. § 245a.15(c) provides, in relevant part, that 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.

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

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. 8 C.F.R. § 245a.12(e).

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 application and other statements of the applicant, both oral and written, are evidence to be considered. *See Matter of E-M-*, 20 I&N Dec. 77 at 79. The applicant's statements must not be the applicant's only evidence used to establish eligibility, but they should be viewed as valid evidence. *Id.*

The absence of contemporaneous evidence is not necessarily fatal to the applicant's claim of continuous residence in the United States during the statutory period. *See id.* at 82-83. Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence. *See id.*

Documentary evidence may be in the format prescribed by U.S. Citizenship and Immigration Services (USCIS) regulations. *See id.* at 80. For example, 8 C.F.R. § 245a.2(d)(3)(i) states that a letter from an employer should be signed by the employer under penalty of perjury and "state the employer's willingness to come forward and give testimony if requested." *Id.* Letters from employers that do not comply with such requirements do not have to be accorded as much weight as letters that do comply. *Id.* However, even if not in compliance with this regulation, a letter from an employer should be considered as a "relevant document" under 8 C.F.R. § 245a.2(d)(3)(iv)(L). *Id.* Also, affidavits that have been properly attested to may be given more weight than a letter or statement. *Id.* Nonetheless in determining the weight of a statement, it should be examined first to determine upon what basis it was made and whether the statement is internally consistent, plausible and credible. *Id.* What is most important is whether the statement is consistent with the other evidence in the record. *Id.*

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. *Id.* at 79-80. In evaluating the evidence, *Matter of E-M-* also states that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* at 80. 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 petitioner or 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 or petitioner has satisfied the standard of proof. *See U.S. v.*

Cardozo-Fonseca, 480 U.S. 421, 431 (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, to deny the application or petition.

Under section 1104(c)(2)(E)(i) of the LIFE Act, regarding basic citizenship skills, an applicant for permanent resident status must demonstrate that he or she:

- (I) meets the requirements of section 312(a) of the Immigration and Nationality Act (8 U.S.C. 1423(a))(relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or
- (II) is satisfactorily pursuing a course of study (recognized by the [Secretary of Homeland Security]) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

Under section 1104(c)(2)(E)(ii) of the LIFE Act, the Secretary of Homeland Security may waive all or part of the above requirements for aliens who are at least 65 years of age or who are developmentally disabled.

An applicant may establish that he or she has met the requirements of section 312(a) of the Immigration and Nationality Act (Act) by demonstrating an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language and by demonstrating a knowledge and understanding of the fundamentals of the history and of the principles and form of government of the United States. *See* 8 C.F.R. § 245a.17(a)(1) and 8 C.F.R. §§ 312.1 and 312.2.

An applicant may also establish that he or she has met the requirements of section 1104(c)(2)(E)(i) of the LIFE Act by providing a high school diploma or general educational development diploma (GED) from a school in the United States. *See* 8 C.F.R. § 245a.17(a)(2). The GED or high school diploma may be submitted either at the time of filing the Form I-485 LIFE Act application, subsequent to filing the application but prior to the interview, or at the time of the interview. *Id.*

Finally, an applicant may establish that he or she has met the requirements of section 1104(c)(2)(E)(i) of the LIFE Act by establishing that:

He or she has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance. The course of study at such learning institution must be for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and the curriculum must include at least 40 hours of instruction in English and United States history and government. The applicant may submit certification on letterhead stationery from a state recognized, accredited learning institution either at the time of filing Form I-485, subsequent to filing the

application but prior to the interview, or at the time of the interview (the applicant's name and A-number must appear on any such evidence submitted).

8 C.F.R. § 245a.17(a)(3).

An applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the initial LIFE interview shall be afforded a second opportunity after 6 months (or earlier at the request of the applicant) to pass the required tests or to submit the evidence described above. *See* 8 C.F.R. § 245a.17(b).

At issue in this proceeding is whether the applicant is able to establish that he resided continuously in the United States from some date prior to January 1, 1982 through May 4, 1988, and whether the applicant has satisfied the basic citizenship requirements under the LIFE Act. Here, the applicant has not met that burden.

On or near April 11, 1994, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On May 31, 2002, he filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The record includes statements relating to the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988, and that he is otherwise eligible to adjust, such as:

- 1) The Form for Determination of Class Membership in *CSS v. Meese* in which the applicant stated under penalty of perjury that he first entered the United States during 1982.
- 2) The applicant's letter dated May 6, 2004 submitted with the rebuttal to the April 20, 2004 NOID in which the applicant indicates that he has been residing in the United States since 1982.
- 3) Various statements of the applicant's acquaintances and relatives which indicate that the applicant began residing in the United States during 1982.
- 4) The statement on the Form I-290B, Notice of Appeal to the Administrative Appeals Unit (AAU), dated July 28, 2004 on which previous counsel indicated that the evidence in the record demonstrates that the applicant resided continuously in the United States from 1982 through 1988.
- 5) The Form I-687 which the applicant signed under penalty of perjury and on which the applicant specified at item 33 that he began residing in the United States during 1982.

- 6) A copy of the Form AR-11, Alien's Change of Address Card, which the applicant signed on February 6, 2004 on which he stated that he entered the United States during 1982.
- 7) Records from the applicant's March 2003 and April 2004 LIFE legalization interviews which summarize the examinations provided at those interviews which indicate that the applicant twice failed the LIFE basic citizenship tests, as well as records and letters from the Dona Ana Branch Community College that indicate that it was not until after his final LIFE legalization interview that the applicant provided documentation which specified that his ongoing coursework at this college involved instruction in English and U.S. history and civics.
- 8) The Form I-765, Application for Employment Authorization, which the applicant signed on May 28, 2002 on which he indicated that on July 5, 1999 he entered the United States as a nonimmigrant B2 visitor for pleasure at El Paso, Texas.

The record does not include evidence that might be considered contemporaneous evidence from the statutory period. The record does contain some documents which relate to the applicant's residence in the United States dated after the statutory period. These documents are not probative in this matter.

The director first issued a NOID on April 20, 2004² in which he indicated that he intended to deny the application because the applicant did not provide sufficient evidence to support his claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988. The director also stated that the applicant had failed twice to pass the LIFE basic citizenship skills tests, and had failed to provide documentation that his coursework at Dona Ana Branch Community College included instruction in English and U.S. history and government.

With the rebuttal, the applicant failed to provide any evidence that even asserted that he resided in the United States prior to January 1, 1982. Also, the applicant did not provide documentation that his coursework at Dona Ana Branch Community College included instruction in English and U.S. history and government.

² The AAO remanded this matter in 2005 because the record indicated that the director had failed to issue a NOID prior to issuing his July 1, 2004 notice of decision. When the new decision was certified to the AAO in 2009, the 2004 NOID was in the record and the director indicated in a memorandum to the AAO that the complete record of proceedings had not been forwarded to the AAO when the case was appealed in July 2004; however, in 2009 the director forwarded the complete A-file to the AAO. It is also noted that the director issued a request for evidence on January 21, 2004 in which he asked for evidence that the applicant entered the United States prior to January 1, 1982 and resided continuously through May 4, 1988 and informed the applicant that failure to submit such evidence would result in the denial of his application.

The director denied the application because the applicant had failed to provide proof that he resided in the United States prior to January 1, 1982 and through May 4, 1988. He also denied the application because the applicant had failed to demonstrate basic citizenship skills, or to provide documentation that he had completed coursework that involved instruction in English and U.S. history and government.

On appeal, the applicant asserted through previous counsel that the evidence in the record supports his claim that he resided continuously in the United States "between 1982 and 1988". He also indicated that based on the coursework that he completed at Dona Ana Branch Community College, the English and civics requirements should be waived. The applicant submitted the letter of [REDACTED], ABE Tutorial and Support Services Coordinator, Dona Ana Branch Community College, dated July 26, 2004 that specifies that the applicant's coursework at this college which began in March 2003 included instruction in English as a second language and U.S. citizenship skills. The case was remanded back to the director because the record as presented to the AAO indicated that the director had not issued a NOID.

In the May 12, 2006 NOID, the director indicated that the applicant had failed to establish that it was more likely than not that he had continuously resided in the United States from a date prior to January 1, 1982 and through May 4, 1988.

In the rebuttal, the applicant failed to provide any statements or other evidence that even assert that he entered the United States prior to January 1, 1982 or that he resided continuously in the United States from some date prior to January 1, 1982.

In the February 3, 2009 notice of decision the director indicated that the applicant's statements and affidavits in the record do not support the finding that the applicant continuously resided in the United States from a date prior to January 1, 1982 through May 4, 1988. Also, the director indicated that the applicant had failed to demonstrate basic citizenship skills and that the applicant had failed to properly document that the coursework that he completed included instruction in English and U.S. history and government.

The applicant has consistently stated throughout these proceedings that he first entered the United States in 1982. The affidavits and statements in the record make no assertion that the applicant entered the United States prior to January 1, 1982 and began residing in the United States prior to January 1, 1982.

As stated by the director in the notice of decision, the applicant has failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988. Thus, he is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

As noted earlier, an applicant may establish that he has met the basic citizenship skills requirements of the LIFE Act by demonstrating that he has attended or is attending a learning institution for a

period of one academic year or its equivalent and the curriculum includes at least 40 hours of instruction in English and United States history and government. The applicant did provide such documentation, but he did so after his final LIFE legalization interview. Yet, the regulations require that he provide such evidence either prior to or at the time of the LIFE legalization interview. See 8 C.F.R. § 245a.17(a)(3). Thus, the applicant failed to establish that he had satisfied the basic citizenship skills requirement described at section 1104(c)(2)(E) of the LIFE Act. He is not eligible to adjust to permanent resident status under the LIFE Act for this reason as well.

An application that fails to comply with the technical requirements of the law may be denied on those grounds by the AAO even if the Service Center or District Office does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

Beyond the decision of the director, the AAO finds that the applicant is not eligible for permanent resident status under the late legalization provisions of the LIFE Act because the record indicates that he is inadmissible under section 212(a)(6)(C)(i) of the Act.

The regulation at 8 C.F.R. § 245a.2(b) provides in pertinent part:

(b) Eligibility. The following categories of aliens, who are otherwise eligible to apply for legalization, may file for adjustment to temporary residence status:

. . .

(9) An alien who would be otherwise eligible for legalization and who was present in the United States in an unlawful status prior to January 1, 1982, and reentered the United States as a nonimmigrant, such entry being documented on Service Form I-94, Arrival-Departure Record, in order to return to an unrelinquished unlawful residence.

(10) An alien described in paragraph (b)(9) of this section must receive a waiver of the excludable charge 212(a)(19) as an alien who entered the United States by fraud.

The ground of excludability at section 212(a)(19) of the Act has been replaced by the ground of inadmissibility listed at section 212(a)(6)(C)(i) of the Act, as amended.

The record indicates that on July 5, 1999, the applicant presented himself as a lawful nonimmigrant B-2 visitor for pleasure upon admission at El Paso, Texas. Yet, according to the claims which the applicant made in this proceeding, his intent upon returning in 1999 was to continue residing unlawfully in the United States. Thus, in July 1999, the applicant procured entry into the United States by willfully misrepresenting a material fact. As such, he is inadmissible under section 212(a)(6)(C)(i) of the Act.

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 is admissible to the United States. *See* 8 C.F.R. § 245a.12(e). The applicant might only overcome this particular ground of inadmissibility if he applies for and secures a waiver for the ground of inadmissibility at issue in the matter. *See* 8 C.F.R. § 245a.18(c). The applicant has not submitted the Form I-690, Application for Waiver of Grounds of Excludability, which is the form an applicant must file to request a waiver of the ground of inadmissibility set forth at section 212(a)(6)(C)(i) of the Act. As such, the applicant currently remains inadmissible under section 212(a)(6)(C)(i) of the Act.

The applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act for the reasons stated above with each considered as an independent and alternative basis for denial.

ORDER: The director's decision dated February 3, 2009 is affirmed. The application is denied.