

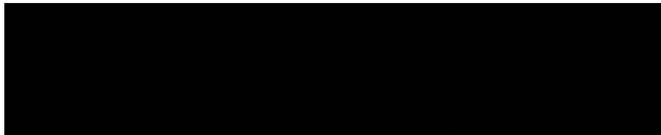


U.S. Citizenship  
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FILE:

MSC 02 236 63724

Office: CHICAGO

Date: MAY 06 2009

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 Chicago, Illinois. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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

On appeal, the applicant asserts he has submitted sufficient credible evidence to establish that he meets the continuous residence requirement for LIFE legalization.

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.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(b).

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 the Mexico who claims to have lived in the United States since November 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on May 24, 2002.

In a Notice of Intent to Deny (NOID), dated March 25, 2008, the director indicated that the applicant had not submitted sufficient credible evidence to establish that he entered the United States before January 1, 1982 and resided continuously in the country through the period required for legalization under the LIFE Act. The applicant was granted 30 days to submit additional evidence.

The applicant did not respond to the NOID, and on May 8, 2008, the director issued a Notice of Denial, denying the application for the reasons stated in the NOID.

The applicant timely filed an appeal, asserting that he has submitted sufficient credible evidence to establish that he meets the continuous residence requirement for LIFE legalization. The applicant submitted an additional affidavit with the appeal.

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 entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The documentation submitted by the applicant in support of his claim that he entered the United States before January 1, 1982, and resided continuously in the country in an unlawful status through the requisite period for LIFE legalization, consists of the following:

- An affidavit by [REDACTED] dated November 27, 1990, stating that the applicant was employed as a janitor for her building at [REDACTED] Lake Elsinore, California, from November 1981 to May 1990, and was paid in cash.  
An affidavit of employment by [REDACTED] dated January 31, 1991, stating that the applicant was employed on a part time basis for two days a week from January 1982 to May 1990, performing yard landscaping.  
An affidavit of residence by [REDACTED], dated November 3, 1990, stating that the applicant resided with her at [REDACTED] Lake Elsinore, California, from November 1981 to May 1990, and paid a rent of \$250.00 per month.
- Various rental and merchandise receipts, bearing dates from 1981 to 1988, with handwritten notations of the applicant's name, and no stamps or other official markings to authenticate the dates they were written. Some of the receipts do not identify the applicant's complete address.
- A series of affidavits – dated in 1990 and 2008 – by individuals who claim to have known the applicant resided in the United States during the 1980s.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility. The documentation submitted is not probative and credible.

The affidavits of employment by [REDACTED] and [REDACTED] do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they did not provide the applicant's address during the periods of employment and did not indicate whether there were periods of layoff. The affiants did not indicate whether the information about the applicant's employment was based on company records and whether such records are available for review. The affidavits are not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant actually employed during the periods indicated. The AAO notes that the applicant did not indicate on the Form I-687 (application for status as a temporary

resident) dated December 6, 1990, that he was employed by [REDACTED] at any time during the 1980s. Thus, the affidavit by [REDACTED] is suspect. In view of the substantive deficiencies and possible fraud, the affidavits of employment have limited probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

The rental receipts in the record, purportedly issued by [REDACTED] from 1981 to 1988, all have handwritten notations of the applicant's name with no date stamps or other official markings to verify the dates they were written. Most of the receipts did not identify the address of the residence for which the rental receipts were issued, while others identified the address as [REDACTED]. The rental amount indicated on all the receipts is \$50.00. A copy of an affidavit of residence in the file, signed by [REDACTED], indicated the applicant's address of residence as [REDACTED] Lake Elsinore, California and the rental amount as \$250.00 per month. While some of the receipts correctly identified the rental address, the amount of rent and the signatory on the receipts are incorrect, thereby calling into question the veracity and credibility of the rental receipts and other receipts in the record. Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). For the reasons discussed above, the receipts are suspect and have little probative value as evidence of the applicant's continuous residence in the United States during the years 1981 through May 4, 1988.

The affidavits in the record by individuals who claim to have known the applicant resided in the United States during the 1980s have minimalist or fill-in-the-blank formats with little personal input by the affiants. Considering the length of time they claim to have known the applicant – in all cases since 1981 – the affiants provide remarkably little information about his life in the United States and their interaction with him over the years. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationships with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Beyond the decision of the director, the applicant acknowledged on his Form I-687 and accompanying Affidavit for Determination of Class Membership in [LULAC] v. INS, both dated in December 1990, that he was absent from the United States on a family visit to the Mexico from November 1987 to January 1988 – a total of 63 days. This absence from the United States far exceeded the 45-day maximum for a single absence prescribed in the regulation at 8 C.F.R. § 245a.15(c)(1). An absence of such duration interrupts 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." The applicant has not established 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 1987 within the 45-day period allowed in the regulation. Thus, the applicant's trip to Mexico in 1987 would have interrupted his continuous residence in the United States. 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 AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982, and 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. Accordingly, the applicant is ineligible for permanent resident status under 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.