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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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FILE:



Office: CHICAGO

Date:

AUG 06 2010

IN RE:

Applicant:



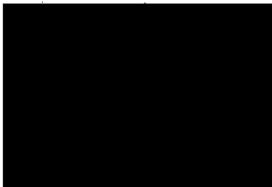
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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 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.



Chief, Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the director of the Chicago office, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director found that the applicant failed to establish that he began residing unlawfully in the United States on a date prior to January 1, 1982 and through May 4, 1988, and that his unlawful status was known to the government prior to January 1, 1982.

On appeal, the applicant asserts that the director erred in finding that the applicant failed to prove that he was in unlawful status in the United States prior to January 1, 1982 and through May 4, 1988 in a manner known to the government. Counsel asserts that the evidence establishes that the applicant is eligible to adjust status under the LIFE Act. Counsel states that a brief and/or additional evidence will be submitted within 30 days. The applicant has not submitted any additional evidence on appeal. Counsel has not submitted a brief on appeal. The AAO has considered counsel's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.<sup>1</sup>

On September 9, 2008 the court approved a Stipulation of Settlement in the class action *Northwest Immigrant Rights Project, et al. vs. USCIS, et al.*, 88-CV-00379 JLR (W.D. Was.) (NWIRP). Class members are defined, in relevant part, as:

1. Class Members [include] all persons who entered the United States in a nonimmigrant status prior to January 1, 1982, who are otherwise *prima facie* eligible for legalization under § 245A of the INA [Immigration & Nationality Act], 8 U.S.C. § 1255a, who are within one or more of the Enumerated Categories described below in paragraph 2, and who –

(A) between May 5, 1987 and May 4, 1988, attempted to file a complete application for legalization under § 245A of the INA and fees to an Immigration and Naturalization Service (INS) officer or agent acting on behalf of the INS, including a Qualified Designated Agency (QDE), and whose applications were rejected for filing (hereinafter referred to as 'Subclass A members'); or

(B) between May 5, 1987 and May 4, 1988, attempted to apply for legalization with an INS officer, or agent acting on behalf of the INS, including a QDE, under § 245A of the INA, but were advised that they were ineligible for legalization, or were refused legalization application forms, and for whom such information, or inability to obtain the required application forms, was a substantial cause of their failure to file or complete a timely written application (hereinafter referred to as 'Sub-class B' members); or

(C) filed a legalization application under INA § 245A and fees with an INS officer or agent acting on behalf of the INS, including a QDE, and whose application

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<sup>1</sup> The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

- i. has not been finally adjudicated or whose temporary resident status has been proposed for termination (hereinafter referred to as 'Sub-class C.i. members'),
  - ii. was denied or whose temporary resident status was terminated, where the INS or USCIS action or inaction was because INS or USCIS believed the applicant had failed to meet the 'known to the government' requirement, or the requirement that s/he demonstrate that his/her unlawful residence was continuous (hereinafter referred to as 'Sub-class C.ii members').
2. Enumerated Categories
- (1) Persons who violated the terms of their nonimmigrant status prior to January 1, 1982 in a manner known to the government because documentation or the absence thereof (including, but not limited to, the absence of quarterly or annual address reports required on or before December 31, 1981) existed in the records of one or more government agencies which, taken as a whole, warrants a finding that the applicant was in an unlawful status prior to January 1, 1982, in a manner known to the government.
  - (2) Persons who violated the terms of their nonimmigrant visas before January 1, 1982, for whom INS/DHS records for the relevant period (including required school and employer reports of status violations) are not contained in the alien's A-file, and who are unable to meet the requirements of 8 C.F.R. §§ 245a.1(d) and 245a.2(d) without such records.
  - (3) Persons whose facially valid 'lawful status' on or after January 1, 1982 was obtained by fraud or mistake, whether such 'lawful status' was the result of
    - (a) reinstatement to nonimmigrant status;
    - (b) change of nonimmigrant status pursuant to INA § 248;
    - (c) adjustment of status pursuant to INA § 245; or
    - (d) grant of some other immigration benefit deemed to interrupt the continuous unlawful residence or continuous physical presence requirements of INA § 245A.

The AAO finds that the applicant is a member of the [REDACTED] class as enumerated above and will adjudicate the application in accordance with the standards set forth in the [REDACTED] settlement agreement.

[REDACTED] provides that LIFE legalization applications pending as of the date of the agreement shall be adjudicated in accordance with the adjudication standards described in paragraph 8B of the settlement agreement. Under those standards, the applicant must make a *prima facie* showing that prior to January 1, 1982, he violated the terms of his nonimmigrant status in a manner known to the government because documentation or the absence thereof (including, but not limited to, the absence of quarterly or annual address reports required on or before December 31, 1981) existed in the records of one or more government agencies which, taken as a whole, warrants a finding that the applicant was in an unlawful status prior to January 1, 1982, in a manner known to the government. It is presumed that the school or employer complied with the law and reported violations of status to the INS; the absence of a school or employer report in government records is not sufficient on its

own to rebut this presumption. Once the applicant makes a *prima facie* showing of having violated nonimmigrant status in a manner known to the government, USCIS then must rebut the evidence that the applicant violated his or her status. If USCIS fails to rebut the evidence, the settlement agreement stipulates at paragraph 8B that it will be found that the applicant's unlawful status was known to the government as of January 1, 1982. Where an individual claims to have obtained his or her nonimmigrant status by fraud or mistake, the applicant bears the burden of establishing this. The settlement agreement further stipulates that the general adjudicatory standards set forth in 8 C.F.R. § 245a.18(d) or 8 C.F.R. § 245a.2(k)(4), whichever is more favorable to the applicant, shall be followed to adjudicate the merits of the application once class membership is favorably determined.

In addition, until December 29, 1981, section 265 of the Immigration and Nationality Act (Act) stated that any alien in the United States in "lawful temporary residence status shall" notify the Attorney General "in writing of his address at the expiration of each three-month period during which he remains in the United States, regardless of whether there has been any change in address."<sup>2</sup>

The record establishes that the applicant entered the United States as a nonimmigrant F-1 student on August 23, 1980, and as a nonimmigrant B-2 visitor on April 19, 1985. The record also establishes that the applicant was absent from the United States for trips to Bombay on November 27, 1984 and March 15, 1985, respectively, and for a trip to Karachi on April 12, 1985.<sup>3</sup> Further, the record reveals that the applicant departed the United States on May 15, 1985 and entered the United States as a nonimmigrant B-2 visitor after the requisite period, on July 15, 1989.

The record indicates that the applicant failed to file the required quarterly address report by November 30, 1980, three months after his August 30, 1980 nonimmigrant entry, or an annual address report in 1981. There is no record of these address reports in the record. For this reason, the AAO finds that the applicant violated his nonimmigrant status in a manner that was known to the government prior to January 1, 1982, by failing to file quarterly or annual address notifications as required prior to December 29, 1981.

Similarly, the record supports the finding that the applicant obtained entry into the United States on April 19, 1985 through fraud or mistake, as he was not in lawful nonimmigrant status in 1985, and his actual intent upon entry was to return to an unrelinquished domicile and to reside indefinitely in the United States. Consequently, this entry does not establish that the applicant was lawfully present in the United States during the statutory period.

For the reasons stated above, the applicant has overcome one of the grounds for denial cited by the director and has established that his unlawful status was known to the government prior to January 1, 1982.

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<sup>2</sup> Section 265 was modified, effective December 29, 1981, such that lawful non-immigrants were no longer required to file quarterly address reports regardless of whether there had been any change in address. See section 265 of the Act (1980) and PL 97-116, 1981 HR 4327 (1981).

<sup>3</sup> On November 27, 1984, the applicant obtained passport number [REDACTED] in Bombay; on March 15, 1985, the applicant obtained a nonimmigrant visitor's visa at the United States embassy in Bombay; and, on April 12, 1985, the applicant was married in Karachi.

However, the AAO intends to dismiss the appeal because the applicant has failed to establish that he resided continuously in the United States from the date of his entry on August 30, 1980 and throughout the requisite period.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must establish his or her continuous, unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act states in relevant part:

(i) In General – The alien must establish that he or she entered the United States before January 1, 1982, and 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 (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

See also 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.

An applicant for permanent resident status under the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in any of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993)(CSS), *League of United Latin American Citizens v. INS, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993)(LULAC), or *Zambrano v. INS, vacated sub nom. Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993)(Zambrano). See 8 C.F.R. § 245a.10.

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).

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.

Section 212(a)(6)(C) of the Act provides in pertinent part:

Misrepresentation. – (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

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 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 the regulatory 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. Doubt cast on any aspect of the applicant’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

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; that he is admissible to the United States; and that he is otherwise eligible to adjust under the LIFE Act. The documentation that the applicant submits in support of his claim that he resided continuously in the United States from the date of his entry on August 30, 1980 and throughout the requisite period, consists of witness statements and documents. The AAO has reviewed each document in its entirety to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The applicant has submitted witness statements from [REDACTED]

[REDACTED] The statements are general in nature and state that the witnesses have knowledge of the applicant’s residence in the United States for all, or a portion of, the requisite period.

Although the witnesses claim to have personal knowledge of the applicant’s residence in the United States during the requisite period, the witness statements do not provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations, and demonstrate that they were a sufficient basis for reliable knowledge about the applicant’s residence in the United States during the requisite period. To be considered probative and credible, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. For instance the witnesses do not specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The witnesses do not state the address at which the applicant was residing during the requisite period.

The witnesses do not state how frequently they had contact with the applicant during the requisite period. The witnesses do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness statements do not indicate that their assertions are probably true.

The record contains a copy of page 13 of the applicant's Indian passport number [REDACTED] containing a copy of a student visa obtained by the applicant on August 12, 1980 at the American consulate in Bombay, permitting the applicant to study at the State University of New York (SUNY), Stony Brook in Long Island, Yew York. The passport page also contains a copy of a New York entry stamp dated August 23, 1980.

The applicant has submitted a copy of a New York Blood Center/American Red Cross Blood Donor Card dated April 8, 1981. The record also contains a copy of a New York State Driver's license dated May 26, 1981. The applicant has also submitted a copy of an automobile Retail Installment and Security Agreement dated August 10, 1981, as well as an undated International Student Identity Card, listing the applicant's attendance at SUNY at Stony Brook.

The record contains a copy of a student identification card from Pennsylvania State University with a stamp that states, "spring 1982, full time". The record also contains a letter, stating that the applicant did not attend classes at Pennsylvania State University in the spring 1982 semester due to non-payment of fees. The record also contains a copy of a statement of earnings from the Social Security Administration, listing earnings in 1981 and 1982.

The applicant has submitted copies of several pages of the applicant's Indian passport number [REDACTED] issued to the applicant in Bombay on November 27, 1984. The applicant has also submitted a copy of page 9 of the passport, containing a copy of a multiple entry visitor's visa obtained by the applicant on March 15, 1985 at the American consulate in Bombay, and a copy of a New York entry stamp dated April 19, 1985. The record reveals that the applicant departed from the United States on May 15, 1985.

The record contains a copy of a food service course completion certificate dated November 28, 1986, and an apartment lease dated November 30, 1986. The applicant has also submitted a copy of a vaccination report for the applicant's son, listing vaccinations given in Illinois during the period of June 15, 1986 to October 20, 1987, and an accompanying doctor's letter, stating that the doctor continued to care for the applicant's son through the end of the requisite period.

The applicant has submitted a certificate of completion of the Road Scholar's Program dated May 14, 1987. The applicant has also submitted an Illinois food service license dated April 20, 1987, listing the applicant's address as [REDACTED]. However, the address listed on the license is inconsistent with the residence address listed in the applicant's three I-687 applications, filed in 1990, 2002 and 2005, respectively. In the I-687 applications, the applicant lists an address in Fort Lauderdale, Florida from June 1986 for the duration of the requisite period. Therefore, this document will be given no weight.

The record contains a copy of a Florida car title dated April 28, 1988.

The record contains a statement from the Social Security Administration indicating that the applicant earned and reported wages in the years in 1981 and 1982, but none in the years 1982 to 1990.

While the documents listed above indicate that the applicant resided in the United States for some part of the requisite period, considered individually and together with other evidence of record, they do not establish the applicant's continuous residence for the duration of the requisite period.

The remaining evidence in the record is comprised of the applicant's statements, the I-485 application, the applicant's Form I-687, application for status as a temporary resident, filed in 1990 to establish the applicant's CSS class membership, and two additional I-687 applications filed in 2002 and 2005, respectively. The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding his absences from the United States during the requisite statutory period.

In all three I-687 applications, the applicant states that he was absent from the United States one time during the requisite statutory period, from March 1985 to April 1985.

However, in a statement dated August 1, 2007, the applicant states that he has been in the United States continuously since before 1982, with the exception of one absence from the United States after the requisite period.<sup>4</sup>

Further, as stated above, the record reflects that the applicant was in Bombay on November 27, 1984, when he obtained Indian passport number [REDACTED]. The records also reflect that the applicant departed from the United States on May 15, 1985.

The applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period. The inconsistencies regarding the dates the applicant resided at a particular location in the United States and was absent from the United States are material to the applicant's claim, in that they have a direct bearing on the applicant's residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA). These contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought. The various statements currently in the record which attempt to substantiate the applicant's residence in the United States during the statutory period are not objective, independent evidence such that they

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<sup>4</sup> The applicant states that he was outside of the United States from June 1989 to July 1989. However, the record also contains a copy of the applicant's Indian passport number [REDACTED] obtained by the applicant in Delhi on May 31, 1988. While outside of the requisite time period, these inconsistencies call into question the veracity of the applicant's testimony regarding his continuous residence in the United States during the requisite period.

might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

Based upon the foregoing, the applicant has failed to establish continuous residence in an unlawful status in the United States for some time prior to January 1, 1982 and through May 4, 1988. The applicant is, therefore, not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act on this basis.

Further, the application may not be approved as the evidence establishes that the applicant is inadmissible to the United States as one who has sought through fraud or misrepresentation to procure an immigration benefit under the Act. *See* Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). The record reflects that the applicant obtained a nonimmigrant visitor's visa in Bombay on March 15, 1985, and reentered the United States using the nonimmigrant visitor's visa on April 19, 1985, without disclosing the fact that he had violated the terms of his student visa by failing to file quarterly or annual address notifications. In addition, the applicant was an intending immigrant with respect to that entry. In order to qualify for the visitor's visa, the applicant would have misrepresented that he was not an intending immigrant. The United States Department of State will not issue a nonimmigrant visitor's visa to an intending immigrant, and if the applicant had disclosed his true intentions he would not have been granted the visa. *See*, section 101(a)(15)(B), 8 U.S.C. § 101(a)(15)(B); 9 FAM 41.31.

Based on the above, the AAO finds that the applicant misrepresented his intentions in order to obtain an immigration benefit. An alien is inadmissible if he seeks through fraud or misrepresentation to procure an immigration benefit under the Act. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). Thus, the applicant is inadmissible and ineligible for legalization benefits.

Although this ground of inadmissibility is waivable, even if the applicant were to be granted a waiver he remains ineligible for failure to establish his continuous unlawful residence. The record indicates that the applicant's has not filed a Form I-690, Application for Waiver of Grounds of Inadmissibility.

Therefore, based upon the forgoing, the applicant has not established continuous, unlawful residence in the United States from a date prior to January 1, 1982 through May 4, 1988. He has not established that he is admissible to the United States or that he has filed with the director a properly completed request for a waiver of the grounds of inadmissibility to which he is subject. The applicant is not eligible to adjust to permanent resident status under section 1104 of the LIFE Act for these reasons, with each considered as an independent and alternative basis for denial.

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