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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



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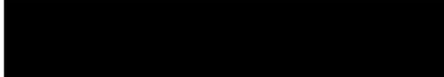
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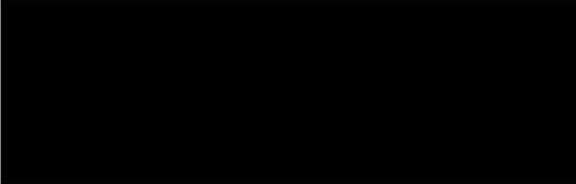
IN RE:

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.

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

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

The director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act. The director further determined that the applicant had not demonstrated that he was a class member in a requisite legalization class action lawsuit because the applicant admitted that he did not attempt to apply for legalization in the original application period from May 5, 1987 to May 4, 1988. Therefore, the director concluded that the applicant was not eligible to adjust to permanent resident status pursuant to the terms of the LIFE Act and denied the application.

On appeal, counsel reiterates the applicant's claim of residence in this country for the required period and asserts that the applicant submitted sufficient evidence to support such claim. Counsel requests a copy of the record of proceedings and indicated a brief would be forthcoming within thirty days of compliance with this request.

The record shows that United States and Citizenship and Immigration Services or USCIS (formerly the Immigration and Naturalization Service or the Service) complied with counsel's request with Control Number NRC2008060709 and mailed a copy of the record to counsel on September 8, 2009.

As of the date of this decision, neither counsel nor the applicant has submitted a statement, brief, or evidence to supplement the appeal. Therefore, the record must be considered complete.

Although the director determined that the applicant had not established that he was eligible for class membership in one of the requisite legalization lawsuits, the director treated the applicant as a class member in adjudicating the Form I-485 LIFE Act application on the basis of whether the applicant had established continuous residence in the United States for the requisite period. More importantly, the record shows that the applicant did assert a claim to membership in the one of the requisite legalization class action lawsuits when he filed a late Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act), on November 19, 1990. Consequently, the adjudication of the applicant's appeal as it relates to his claim of continuous residence in the United States since prior to January 1, 1982 shall continue.

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 and through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

The applicant 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 under the

provisions of section 212(a) of the Act, 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 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 "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.* 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. *Id.*

Even if the director has some doubt as to the truth, if the petitioner 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, deny the application or petition.

The issue to be examined in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing his continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to file a Form I-687 application on November 19, 1990. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the preparer indicated that the applicant resided at [REDACTED] in

██████████ from January 1981 to May 1985 and ██████████ from May 1985 to the date the Form I-687 application was filed on November 19, 1990.

The applicant subsequently submitted his Form I-485 LIFE Act application on December 31, 2001.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted an employment affidavit containing an illegible signature. The individual who signed the affidavit declared that the applicant had worked for an unspecified landscaping company for \$150.00 a week from March 1981 to November 1984. The individual who signed the affidavit provided the applicant's residence during the period he worked for this landscaping company and that information relating to the applicant's employment was taken from official company records at ██████████ in Dallas, Texas. However, the individual who signed the affidavit failed to state the applicant's duties as required by 8 C.F.R. § 245a.2(d)(3)(i). More importantly, the individual who signed the affidavit failed to specify the name of the company and did not provide any information as to the origin of his knowledge regarding the applicant's employment with this unnamed landscaping company as he did not specify either his position or affiliation with this enterprise.

The applicant provided an employment affidavit that is signed by Mr. ██████████ supervised the applicant when he had been employed as a maintenance worker for \$175.00 a week by ██████████ at ██████████ in Dallas, Texas from November 1984 to May 1989. ██████████ listed the applicant's residence during the period he worked for this company as ██████████" in Dallas, Texas and that information relating to the applicant's employment was taken from official company records. However, ██████████ testimony that the applicant resided at ██████████ in Dallas, Texas from November 1984 to May 1989 directly contradicted the applicant's testimony at part #33 of the Form I-687 application that he resided at ██████████" in Dallas, Texas from January 1981 to May 1985 and ██████████" from May 1985 to the date the Form I-687 application was filed on November 19, 1990.

The applicant included two affidavits signed by ██████████, and a single affidavit signed by ██████████. Although all of the affiants attested to the applicant's residence in the United States for the requisite period or a portion thereof, their testimony was general and vague and lacked sufficient details and verifiable information to corroborate the applicant's residence in this country for the requisite period.

The applicant submitted original envelopes postmarked June 24, 1985 March 18, 1986, April 28, 1986, August 19, 1986, October 27, 1986, July 14, 1987, January 20, 1988, August 10, 1989 and August 10 of an indeterminate year that were represented as having been mailed by the applicant to individuals in Mexico. However, the probative value of these envelopes is limited as not one the various return addresses listed by the applicant on these envelopes matches the address the

applicant listed as his residence, [REDACTED], from May 1985 through at least November 19, 1990 at part #33 of the Form I-687 application.

The director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status for the requisite period. Therefore, the director concluded that the applicant was ineligible to adjust to permanent residence and denied the Form I-485 LIFE Act application on June 28, 2006.

On appeal, counsel reiterates the applicant's claim of residence in this country for the required period and asserts that the applicant submitted sufficient evidence to support such claim. However, as has been discussed above, the record is absent evidence and supporting documents containing specific and verifiable testimony to substantiate the applicant's residence in this country from prior to January 1, 1982. Further, testimony provided by affiant [REDACTED] and the applicant's listing of return addresses on original envelopes that do not match his address of residence as of the date of the postmarks on these envelopes only serves to raise further questions regarding the credibility of his claim of residence in the United States since before January 1, 1982 to May 4, 1988.

The absence of sufficiently detailed supporting documents and the existence of contradictory testimony and questionable evidence seriously undermine the credibility of his claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States for the requisite period by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no probative value and conflicting nature of testimony and evidence contained in the record, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

The record shows that the applicant was convicted of a misdemeanor violation of section 49.04 (formerly section 6701L/1), Driving While Intoxicated, of the Texas Penal Code, in the Dallas County Criminal Court on December 15, 1994 and sentenced to ninety days in jail, a fine of \$335.00, and twenty four months of community supervision. [REDACTED]

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