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20 Massachusetts Ave., N.W., Rm. A3042
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U.S. Citizenship
and Immigration
Services

L2

[Redacted]

FILE: [Redacted] Office: Chicago

Date: DEC 02 2004

IN RE: Applicant: [Redacted]

PETITION: 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:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The district director denied the application because the evidence provided by the applicant had failed to establish that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, counsel for the applicant asserts that the district office appears to have arbitrarily denied his client's application without having made any attempt at evaluating the adequacy or credibility of the supporting evidence provided by the applicant.

An applicant for permanent resident status 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. 8 C.F.R. § 245a.11(b).

"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.

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).

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. *See Matter of E-- M--*, 20 I&N Dec. 77 (Comm. 1989).

Although Citizenship and Immigration Service (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence since prior to January 1, 1982, the applicant submits the following:

- An affidavit from [REDACTED] who attests to the applicant having resided in New York City from December 1981 to August 1998. The affiant bases his knowledge on having known the applicant since the two first encountered one another at a 1981 Times Square New Year's Eve celebration;
- An affidavit from [REDACTED] who attests to the applicant having resided in New York City from November 1981 to August 1998, and to having been friends with the applicant since having encountered him on a New York subway;

- An employment letter dated January 20, 1995 from [REDACTED] Production Manager at [REDACTED] [REDACTED] who indicates the applicant has been employed on a full-time basis since November 1986; and
- Photocopies of rent receipts made out to the applicant from the Park View Studios Hotel, New York City, carrying the following dates: April 3, 1986, August 13, 1986, October 2, 1986, November 6, 1986, January 2, 1987, June 20, 1987, July 5, 1987, and August 16, 1987.

The applicant has submitted no contemporaneous documentation to establish presence in the U.S. from the time he claimed to have commenced residing in the U.S. from prior to January 1, 1982 through 1986. In light of the fact that the applicant claims to have continuously resided in the U.S. since 1981, this inability to produce contemporaneous documentation of residence during this period raises serious questions regarding the credibility of the claim.

The applicant in this case has submitted only two (2) affidavits in support of his claim to continuous residence in the U.S. prior to 1986, along with an additional letter indicating employment since November 1986. As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. In this case, the applicant has submitted two affidavits attesting to residence which are not accompanied by the affiants' phone numbers and, therefore, fail to provide a means by which the affiants may be readily contacted for purposes of verification. Moreover, while attempting to provide information as to how the affiants and applicant initially became acquainted, the affidavits provide no further details regarding the nature of their relationships or the basis for their continuing awareness of the applicant's residence.

Given the minimal evidence provided by the applicant, the absence of contemporaneous documentation pertaining to this applicant prior to 1986, and the applicant's reliance on affidavits which do not meet basic standards of probative value, it is concluded that he has failed to establish continuous residence in an unlawful status from prior to January 1, 1982 through May 4, 1988, as required. Therefore, the applicant cannot be considered to have met his burden of proof of establishing that he resided in continuous unlawful status in the United States from prior to January 1, 1982 through May 4, 1988, as required. Accordingly, the applicant is ineligible for permanent resident status under section 1104(c)(2)(B) of the LIFE Act.

Although not dealt with in the district director's decision, it is noted that, according to the applicant's own LULAC Class Membership Declaration, completed on September 16, 1989, as well as his Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (INA), he departed the U.S. for Senegal and the Ivory Coast on May 6, 1986 in order to visit family members and did not return until June 24, 1986. As such, the applicant's absence from the U.S. of forty-nine (49) days exceeded the forty-five (45) day limit allowable for a single absence, as set forth in 8 C.F.R. § 245a.15(c)(1). As the applicant has already been found ineligible for permanent status under the LIFE Act for failure to establish continuous residence in the U.S., however, this matter need not be discussed further.

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