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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY



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FILE:



Office: Los Angeles

Date:

DEC 03 2004

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: Self-represented

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 District Director, Los Angeles, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because 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. The director noted the applicant's statement that he had departed from the United States in 1983 for business purposes and that he had not returned to this country until 1985.

On appeal, the applicant states:

The reason for my appeal is that I had "innocently" gave [sic] a wrong date of when I had left the United States. On my form I-690 it clearly stated that I had left United States [sic] in April 1985 & returned in May 1985, which does not exceed the 45 days to be eligible to adjust my status to LPR under LIFE legalization.

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. *See* 8 C.F.R. § 245a.11(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 amenability to verification. *See* 8 C.F.R. § 245a.12(e).

Although Citizenship and Immigration Services 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).

In an attempt to establish continuous unlawful residence since September 1981, as claimed, the applicant furnished the following evidence:

- (1) A copy of a State of California odometer disclosure statement showing Te H Lin purchased an automobile on September 22, 1981.
- (2) A copy of a transmittal envelope for a restitution payment check dated October 25, 1981 to Teshing Lin.
- (3) A visa account statement dated February 21, 1982.
- (4) an Evidence of Insurance document from the State of California issued on November 12, 1982 showing that he was issued motor vehicle insurance by Farmers Insurance Exchange.

- (5) A bank letter from Bank of America to the applicant dated February 26, 1983.
- (6) Copies of medical appointment documents dated May 12, 1983 and April 10, 1987.
- (7) A letter from the City of Los Angeles Parking Violations Bureau to the applicant in San Gabriel, California dated January 24, 1984.
- (8) A copy of a telephone bill to the applicant at an address in San Gabriel California for the billing period from November 12 to December 12, 1984.
- (9) A City of Los Angeles Tax Registration Certificate to Wei Ho Trading Corporation issued October 5, 1985 showing the business started on August 12, 1985.
- (10) A receipt for lost State of California driver's license application dated August 27, 1985 and a temporary driver's license issued to him from that State valid for 120 days from July 18, 1985.
- (11) A notice from the Internal Revenue Service to the applicant dated September 13, 1985.
- (12) A notice from the Internal Revenue Service addressed to the applicant as an officer of Wei Ho Trading Corporation dated September 13, 1985.
- (13) An envelope addressed to the applicant in Monterey Park, California that was mailed to him on August 13, 1986.
- (14) A receipt showing he filed a Form I-687L with CIS Citizenship and Immigration Services or CIS (formerly, the Immigration and Naturalization Service or INS or the Service) on March 19, 1991.
- (15) Vehicle registration cards from the State of California Department of Motor Vehicles showing the issuance of a commercial van registration card on December 31, 1986 and the issuance of automobile registration cards on May 23, 1990, June 3, 1991 and May 20, 1994.
- (16) Page 4 of 5 of a credit report dated June 12, 2000 indicating activity on his accounts from April 1988 through May 2000.
- (17) An earnings report from the USA Social Security Administration showing earnings from 1992 through 2001.
- (18) A letter from the Alhambra School District dated February 4, 2003 showing he was enrolled as a student during 2002 and 2003.

On January 17, 2002, the applicant provided a sworn statement as follows:

1981 Come in USA from Mexican border  
1982 Back to Taiwan  
1985 Got visa B-2 to come USA again

The record also contain an affidavit sworn before an INS officer from the applicant dated February 10, 2003 in which he writes in his own words:

In 1983 feb out USA then I came back 85 with visa. Then 85 overstay. Until 91. 91 apply [sic] E-2 until 2003.

In response to the director's Notice of Intent to Deny dated April 16, 2003, the applicant provided a statement in rebuttal dated April 25, 2003. The applicant explained:

On 03/04/1991, I filed my application for legalization to the USINS, now BCIS. At the time of submission of documents, I filed an affidavit form. On such form, the Service was requesting for me [sic] to declare, "When, where and how did I last depart from the United States." My response to such questions was plain and simple. I indicated that it had been on 04/1985 to Taiwan via airplane.

On the notice of intent to deny, the adjudicating [sic] officer is claiming that I stayed in my native country for a period over 45 days and or over 180 in its aggregate. And that I verbally indicated/gave [sic] such testimony.

Because of the length [sic] of time that it has [sic] elapsed since 1985, I did not remember the exact date I departed. Further, because of my limited English language and the intensive waiting prior to being interviewed, I notified the Bureau that I had departed the USA for business purposes. However, I DID NOT depart the USA for a period over 45 days. Again, because of my nerves, limited English language, anxiety and tier [sic] of waiting to be interviewed for my permanent residence. I "INNOCENTLY" GAVE A WRONG DATE WHICH WAS FROM 1983 UNTIL 1985. hoping this brief will amend the innocent human error that I made, I hereby apologize for any inconveniences I might have caused you. Your prompt attention to this matter will be deeply considered.

In this case, the director relied upon the applicant's statement that he had departed from the United States in 1983 for business purposes and that he had not returned to this country until 1985. The applicant acknowledges that he provided that information but argues that he innocently gave this information to the officer and that he actually left the country in April 1985 by air and that he returned less than 45 days later.

The record shows that the applicant entered the United States on May 30, 1985 as a B2 visitor for pleasure at Los Angeles. However, the record contains no evidence verifying the applicant's assertion that he left the

country in April 1985 as claimed. The record does contain the applicant's claim that he lost the passport that might substantiate his April 1985 departure.

The record contains essentially three claims by the applicant. The first claim is that he came to the United States in 1981, left to Taiwan in 1982 and then returned in 1985. The second is that he left the United States in 1983 and did not return until 1985. The third claim is that he left the United States in April 1985 and returned in May 1985 less than 45 days later. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). In this case, it is determined that the applicant has not adequately resolved such inconsistencies.

It is concluded that the applicant has failed to establish, by a preponderance of evidence, continuous residence for the required period. Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

Beyond the decision of the director, under section 1104(c)(2)(E)(i) of the LIFE Act ("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 Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

The record shows that at the end of the interview on January 17, 2002, the INS officer attempted to administer a test to the applicant to determine that he met the required basic citizenship skills. Although he was informed that the test was a requirement, he refused to take the test because "he was not applying for citizenship." As the basic citizenship skills test that the officer attempted to administer was an integral part of the adjustment of status interview and the applicant refused to take the test, he did not establish that he had acquired the necessary basic citizenship skills. Therefore, the application is denied for this additional reason.

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