

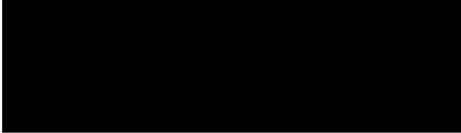


U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]

Office: BALTIMORE Date:

DEC 03 2004

IN RE: Applicant: [REDACTED]

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. Any further inquiry must be made to that office.

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, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district 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.

On appeal, the applicant states that he has submitted substantial affidavits from several people in support of his residence in the United States before January 1, 1982 through May 4, 1988.

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).

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 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:

1. an affidavit dated June 26, 2001 from [REDACTED] who indicated that [s]he first met the applicant in June 1981 and attested to the applicant's residence in New York from June 1981 through November 1984.
2. an affidavit dated July 4, 2001 from [REDACTED] who indicated that he first met the applicant in December 1984, and attested to the applicant's residence in Washington, D.C. from December 1984 through May 1989, and in Silver Spring, Maryland from May 1989 through May 1992.
3. an affidavit dated July 10, 2001 from [REDACTED] who indicated that he first met the applicant in December 1981 at a Christmas Party in Washington, D.C. [REDACTED] attested to the applicant's residence in Washington, D.C. since December 1981, and that in November 1984, he assisted the applicant in finding a job in Silver Spring, Maryland.
4. a letter dated December 14, 1987 from [REDACTED] who indicated that the applicant has been a member of the Volta Club, Inc., in Washington, D.C. since December 1, 1984.

It is noted that the letter from [REDACTED] has little evidentiary weight or probative value as it does not provide [REDACTED] title or her association with Volta Club, Inc.

The director determined that the documentation submitted was insufficient to establish entry prior to January 1, 1982 and of continuous residence through May 4, 1988. In response to a Notice of Intent to Deny issued on January 30, 2003, the applicant submitted his birth certificate and a self-serving affidavit. The applicant reiterated his entry into the United States on May 17, 1981. The applicant asserted that he had no employment records to provide because "most of the jobs I took was under the table." The applicant further asserted that he had no further evidence of his residence in the United States, as "most of my credible evidence was lost during the regular legalization period."

On appeal, the applicant provides a copy of a 1989 memorandum of the legacy Immigration and Naturalization Service entitled "Documentary Evidence for Legalization Applications (Form I-687)." The memorandum provided guidance on the evidentiary weight of affidavits in legalization applications under section 245A of the Immigration and Nationality Act.

The AAO, however, does not view the three affidavits discussed above as substantive enough to support a finding that the applicant continuously resided in the United States before January 1, 1982 through May 4, 1988 as contradicting statements have been presented. The applicant does not provide an explanation for these contradictions.

[REDACTED] attests that the applicant was residing in New York from June 1981 through November 1984; however, the applicant indicated in a notarized affidavit dated July 16, 2002 that he resided in New York from May 1981 through December 1981.

[REDACTED] attests that the applicant was residing in Washington, D.C. from December 1984 through May 1989, and in Silver Spring, Maryland from May 1989 through May 1992. The applicant, however, indicated in the notarized affidavit that he resided in Washington, D.C. from January 1982 through June 1986 and in Silver Spring, Maryland since July 1986.

These factors raise questions about the authenticity of the affiants' affidavits.

Furthermore, a credibility issue arises when documentation insufficient to establish eligibility is altered to demonstrate that the applicant is eligible for the benefit being sought. The applicant provided a photocopy of his Form I-687 application purportedly signed April 12, 1988. Item 33, which lists the applicant's residence in the United States, appears to have been altered as the dates of his residences contain original writing. Moreover, the dates indicated on item 33 of the Form I-687 application contradict the applicant's affidavit notarized in 2002.

Doubt cast on any aspect of the evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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. See *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

On appeal, the applicant requests oral argument. The regulation at 8 C.F.R. § 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. CIS has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Consequently, the request is denied.

Given the contradicting statements, absence of a plausible explanation, it is concluded that the applicant has failed to establish continuous residence in the U.S. for the required period.

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