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**U.S. Citizenship
and Immigration
Services**



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DEC 21 2004

FILE:  Office: Los Angeles Date:

IN RE: Applicant: 

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: 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.

[Handwritten signature of 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, 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 from before January 1, 1982 through May 4, 1988.

On appeal, the applicant asserts that, due to the passage of time, he no longer possesses original documentation which could have served to support his claim to continuous residence in the U.S.

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. 8 C.F.R. § 245a.12(e). When something is to be established by a preponderance of evidence it is sufficient that the proof only establish that it is *probably* true. See *Matter of E-- M--*, 20 I&N Dec. 77 (Comm. 1989). Preponderance of the evidence has also been defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979).

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).

In an attempt to establish continuous unlawful residence since before January 1, 1982, as claimed, the applicant furnished the following evidence:

- An employment letter dated February 24, 1988 from [REDACTED] Santa Ana, California, who indicates the applicant has been employed at that concern since May 6, 1987;
- An affidavit from [REDACTED] attesting to the applicant having resided at her home in Redwood City, California, from November 1981 to June 1985;
- An affidavit from [REDACTED] who indicates she is the applicant’s aunt and attests to his having resided at her home in Tustin, California, from 1985 through 1989; and

- A marginally legible photocopy of a California identification card displaying the applicant's name and photo and carrying the date of November 23, 1981 at the bottom of the card directly below the applicant's signature.

The regulations at 8 C.F.R. § 245a.2(d) provide a list of documents that may establish continuous residence and specify that "any other relevant document" may be submitted. However, while the residence affidavits, employment statement, and photocopied identification card provided by the applicant could possibly be considered as evidence of continuous residence during the period under discussion, certain questions have arisen with regard to discrepancies in the applicant's documentation which impact on the overall credibility of his claim.

The applicant has claimed to have resided continuously in the United States since 1981. The record indicates that, on the occasion of the applicant's February 24, 2004 adjustment interview at the Los Angeles district office of Citizenship and Immigration Services (CIS), he attempted to account for his employment in the U.S. during the period from 1981 through May 4, 1988. According to the transcript of the interviewing officer, the applicant indicated the following employment: (1) as a busboy from 1982 to 1984 in [REDACTED] (2) as a janitor working for his uncle from 1985 to 1986; and (3) as a carwash attendant from 1987 to 1989. Yet, the only evidence provided by the applicant to document this employment is the aforementioned letter from [REDACTED]. On appeal, the applicant claims that, due to the passage of time, he no longer possesses original documentation which could have served to support his claim to continuous residence in the U.S. However, at item 36 on his Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (INA), in which an applicant is requested to list all employment in the U.S. since first entry, the *only* entry is the applicant's employment at Classic Carriage Auto Wash since May 1987. No other employment during the period in question has been provided on this application.

An additional discrepancy concerns the applicant's presence in the U.S. during the period from 1981 through 1988. On the applicant's G-325A Biographic Information Form, submitted along with his LIFE application, he indicated he was married in Zacatecas, Mexico on November 29, 1984. However, at item 35 of his I-687 application, in which an applicant is requested to list any and all absences from the U.S. since January 1, 1982, the applicant indicated that his only departure from the U.S. occurred in December 1987 when he traveled to Mexico as a result of a family emergency and returned to the U.S. in January 1988. In addition, at the applicant's subsequent adjustment interview on February 24, 2004, the applicant informed the interviewing examiner that his only departure from the U.S. occurred in 1986, when he visited Mexico for 22 days. As noted above, an applicant for permanent residence under the LIFE Act must establish that no single absence from the United States has exceeded *forty-five (45) days*. In this case, neither on his I-687 application nor on the occasion of his adjustment interview has the applicant provided *any* information indicating that he departed the U.S. for Mexico in November 1984 for the purpose of getting married, or attempting to clarify the duration of that departure.

There is no attempt by the applicant to resolve these serious discrepancies in the documentation which, in turn, seriously diminish the credibility of the applicant's claim and supporting evidence. Doubt cast on any aspect of an applicant's proof 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. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

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. The applicant in this case has provided only two (2) affidavits in support of his claim to continuous residence in the U.S. during the period in question, along with a letter indicating employment since May 1987. Both residence affidavits are from close relatives. Such affiants could hardly be viewed as independent or disinterested third parties. In view of the applicant's claim to continuous residence in the U.S. since 1981, it would not be unreasonable to expect him to provide testimony from more objective sources with less obvious interest in the outcome of this proceeding, such as acquaintances, colleagues or neighbors.

It is concluded that the applicant has failed to credibly establish having continuously resided in the U.S. in an unlawful status from prior to January 1, 1982 through May 4, 1988, as required.

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