

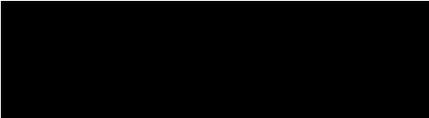
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U.S. Department of Homeland Security
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536



FILE:



Office: Baltimore

Date:

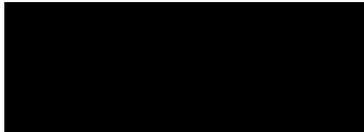
JAN 21 2004

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:



INSTRUCTIONS:

Attached is the decision rendered on your appeal. The file has been returned to the Baltimore office. 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.

Thomas M. Keefe
for

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, and is now before the Administrative Appeals Office 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, counsel requests that the applicant be permitted an additional 120 days in which to submit a brief and/or evidence in support of his appeal. However, as of this date, no additional brief or evidence has been submitted into the record of proceedings.

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 November 1981, as claimed on the applicant's Biographic Information Form G-325A, the applicant furnished an affidavit dated July 27, 1993 from [REDACTED] attesting to the applicant and his wife having resided in the affiant's domicile from November 1981 to June 1989. No other evidence was provided.

Subsequently, the director sent the applicant a notice of intent to deny, which requested that the applicant submit additional evidence of continuous unlawful residence in the U.S. from January 1, 1982 through May 4, 1988, and continuous physical presence in the U.S. from November 6, 1986 through May 4, 1988. However, the applicant has failed to provide any additional evidence, either in response to the notice of intent to deny or, subsequently, on appeal.

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation. The extremely minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.2(12)(e).

The applicant in this case asserts that he has resided continuously in the U.S. since November 1981 -- a period in excess of 22 years. Nevertheless, he has only been able to provide CIS with one affidavit in support of his claim of residence. It should also be emphasized that the applicant has submitted no documentation to indicate where he was employed during his purported twenty-two years of residence in the U.S.

In *Matter of E-- M--*, supra, the applicant had established eligibility by submitting (1) the original copy of his Arrival-Departure Record (Form I-94), dated August 27, 1981; (2) his passport; (3) affidavits from third party individuals; and (4) an affidavit explaining why additional original documentation is unavailable. Unlike the alien in *Matter of E-M-*, the present applicant does not offer any explanation as to why he has been unable to provide additional evidence to support his claim. Furthermore, the officer who interviewed that applicant recommended approval of the application, albeit, with reservations and suspicion of fraud. In the present case, however, the officer interviewing the applicant regarding his CSS/LULAC eligibility recommended denial of the application. According to the officer's notes, the applicant was unable to provide any details regarding his purported 1987 re-entry into the U.S. In the opinion of the interviewing officer, the applicant's testimony was generally lacking in overall credibility.

Finally, an examination of the record indicates that, on his U.S. Immigration & Naturalization Service History and Government Test, which was administered at CIS's Baltimore office, the applicant achieved an evaluative rating indicating an inability to understand English. The total lack of familiarity with the English language demonstrated by the applicant renders his claim to have continuously resided in the United States since 1981 somewhat questionable.

Given the absence of any contemporaneous documentation, along with the applicant's reliance on a single affidavit, it is concluded that he 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.