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U.S. Citizenship  
and Immigration  
Services

[Redacted]

FILE:

[Redacted]

Office: Buffalo

Date:

JUN 20 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:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has 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 District Director, Buffalo, New York, 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, the applicant states that he has submitted substantial affidavits from several people in support of his presence in the United States before January 1, 1982 through May 4, 1988. The applicant further states that he was issued a work permit in 1989, and only then could he obtain a social security number. The applicant argues that without this number, he could not get anything in his name concerning his apartment, bank accounts, utility accounts, automobile titles or automobile registrations. He indicates he was working as an illegal worker who did not have a social security number. He then explains that because his employers paid him in cash and he did not pay social security or taxes, he does not have any appropriate employment documents. The applicant asserts that he has been working and paying taxes since he was issued a work permit in 1989, he has worked hard over the years, he owns a small business and that he provides employment to two people.

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 hotel receipt from the Parkview Inn in Arlington, Texas, indicating that he stayed there on December 4 and 5, 1985.
- (2) Affidavit dated May 24, 2002 from [REDACTED] Austin, Texas, a family friend, who states that he met the applicant in 1981 and that the applicant has been present in the USA since.

(3) Photocopies of pages from a passport issued to him on December 22, 1997 by the Royal Nepalese Embassy in Washington, D.C

(4) Affidavit dated May 1, 2003 from ██████████, Cowanee, Georgia, stating that she knew the applicant to be resident in the United States from the beginning of 1982 until May 1984.

(5) Affidavit dated May 1, 2003 ██████████, Austin, Texas, a friend, stating that he met the applicant in December 1996 in Chicago and on a subsequent visit in the early part of 1987. He states that he has had regular contact with him over the years.

(6) Affidavit dated May 1, 2003 from Ahmed Qamruddin, Buford, Georgia, stating that he met the applicant in January 1982 in Chicago and attesting to his presence in Chicago from January 1984 to 1987.

As stated in 8 C.F.R. § 245.15(b)(1), a list of evidence that may establish an alien's continuous residence in the United States can be found at 8 C.F.R. § 245a.2(d)(3).

The *Matter of E-- M--*, 20 I&N Dec. 77 (Comm. 1989) provides guidance in assessing evidence of residence, particularly affidavits. In that case, 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. Furthermore, the officer who interviewed that applicant recommended approval of the application, albeit, with reservations and suspicion of fraud. In this case, the interviewing officer recommended denial of the application, and there is no Form I-94 or admission stamp in a passport establishing the applicant entered the United States prior to January 1, 1982.

The applicant was 13 years old when he claims he entered the United States in 1981, and yet he has not provided any school records showing attendance at a school in this country. In fact, he has not submitted any contemporaneous documentation to establish presence in the United States from the time he claimed to have commenced residing in the U.S. through December 4, 1985, the day he stayed in a hotel in Texas. In light of the fact that the applicant claims to have continuously resided in the United States, this inability to produce contemporaneous documentation of residence raises serious questions regarding the credibility of the claim.

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation. The 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 above negative factors would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided.

While there is no specific regulation that governs what third-party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements that affidavits from organizations are to

include. *See* 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information that an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. *See* 8 C.F.R. § 245a.2(d)(3)(v).

While these standards are not to be rigidly applied, an application that is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits that are considerably lacking in such basic and necessary information.

The affidavits submitted in support of this application fall far short of establishing the applicant's claim to continuous residence from prior to January 1, 1982 through May 4, 1988. Only one of the affiants claims to have met applicant in the United States prior to January 1, 1982. That affiant did not provide the dates of the applicant's continuous residence to which the affiant could personally attest or the address(es) where the applicant resided throughout the period which the affiant had purportedly known him. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. 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).

Given the virtual absence of contemporaneous documentation, the insufficiency of the affidavits, and the implausibility of the applicant's claim to have decided to come to the United States at the age of 13, 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.

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