



U.S. Citizenship
and Immigration
Services

U2

[REDACTED]

FILE:

[REDACTED]

Office: Milwaukee

Date:

NOV 10 2004

IN RE:

Applicant:

[REDACTED]

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:

[REDACTED]

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.

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, Chicago, Illinois, 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, counsel asserts that the applicant has submitted sufficient evidence to support his claim of continuous residence in this country since 1981. Counsel submits documentation in support of the appeal.

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. 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).

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).

Although the 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).

The applicant is a class member in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (INA) on April 19, 1990. At part #33 of the Form I-687 application where applicants were asked to list all residences on the United States from the date of their first entry, the applicant listed the following address:

- [REDACTED] Waukegan IL 60085 from August 1981 to January 1985;
- [REDACTED] Waukegan IL 60085 from February 1985 to February 1988; and,
- [REDACTED] Waukegan IL 60085 from March 1988 to August 1989.

The record shows that the applicant subsequently submitted his Form I-485 LIFE Act application on May 1, 2002. In support of his claim of continuous unlawful residence since before January 1, 1982 to May 4, 1988, the

applicant submitted two affidavits of residence signed by [REDACTED] respectively. In his affidavit, [REDACTED] declared that he knew the applicant and his family when they had lived in India. Although [REDACTED] stated that he became friends with the applicant when he moved to the United States, Mr. [REDACTED] failed to specify the date this occurred. [REDACTED] indicated that the applicant began residing with he and his wife in their apartment at [REDACTED] in Waukegan, Illinois in the winter of 1984-1985 up until 1990. In her affidavit, [REDACTED] the wife of [REDACTED] stated that she and her husband resided with the applicant at the following addresses:

- an unspecified address in Mount Prospect, Illinois from the winter of 1984-1985 to August 1986;
- [REDACTED] Prospect Heights IL from August 1986 to August 1987;
- [REDACTED] Waukegan IL from August 1987 to September 1988;
- [REDACTED] Waukegan IL from September 1988 to October 1989; and,
- [REDACTED] in an unspecified location assumed to be Waukegan IL from November 1989 to October 1990.

The testimony provided by [REDACTED] regarding addresses where he, his wife and the applicant all purportedly resided together is directly contradicted by the testimony of his own wife [REDACTED]. Moreover, the testimony provided by both [REDACTED] directly conflicts with the applicant's listing of addresses where he allegedly resided from August 1981 to August 1989. Neither the applicant nor counsel has provided any explanation for the contradictions and conflicts in the testimony provided by the applicant, [REDACTED]. These direct contradictions and conflicts seriously diminish the probative value of the only evidence submitted in support of the applicant's claim of residence in this country from prior to January 1, 1982 to May 4, 1988. Furthermore the applicant's claim of residence in the United States for the requisite period is undermined by these contradictions and conflicts, as well as the lack of any other supporting evidence.

The statements of counsel on appeal regarding the applicant's inability to produce contemporaneous documents to support his claim of residence in the requisite period have been considered. However, such statements cannot be considered to have overcome the contradictions and conflicts in testimony regarding the applicant's purported addresses of residence as discussed in the preceding paragraph.

The applicant has submitted no contemporaneous documentation to establish presence in the United States from the time he claimed to have commenced residing in the United States in August 1981 to May 4, 1988. In light of the fact that the applicant claims to have continuously resided in this country since at least August 1981, this inability to produce more any contemporaneous documentation to support his claim of residence raises serious questions regarding the credibility of the claim. The credibility of the applicant's claim of residence is further diminished by the direct contradictions and conflicts between his purported addresses as

listed by the applicant on his Form I-687 application and the addresses attributed to the applicant in the affidavits signed respectively by [REDACTED]

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 complete lack of contemporaneous documentation pertaining to this applicant, an outright and direct contradiction and conflict in testimony, and reliance upon supporting documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988. Accordingly, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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