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U.S. Citizenship  
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Services

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FILE:



Office: Milwaukee

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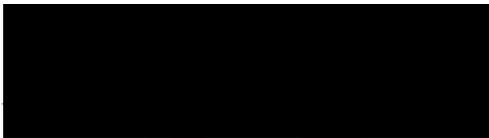
IN RE:

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:



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*

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 Interim District Director, Chicago, 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 failed to establish 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 asserts that he is submitting an additional affidavit from the applicant, and that he is in the process of obtaining additional evidence in support of the applicant's claim to residence.

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. 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 Citizenship and Immigration Service (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:

- A corroborative affidavit from [REDACTED] who attests to the applicant having left the U.S. in November 1987 and returned in January 1988. The affiant also indicates he has known the applicant since January 1987; and
- A notarized statement from [REDACTED] attests to the applicant having resided in the U.S. since 1981, indicating that the applicant has visited him in Virginia on several occasions since that time.

The applicant has submitted no contemporaneous documentation to establish presence in the U.S. from the time he claimed to have commenced residing in the U.S. through May 4, 1988. In light of the fact that the applicant claims to have continuously resided in the U.S. since 1981, this inability to produce contemporaneous documentation of residence raises serious questions regarding the credibility of the claim.

The applicant in this case has submitted only two (2) affidavits in support of his claim to continuous residence in the U.S. 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). Moreover, the affidavit from [REDACTED] fails to specify the basis of the affiant's knowledge regarding the affiant's 1987 departure from the U.S. or to provide any details regarding the basis for the affiant's acquaintanceship with the applicant.

Given the minimal evidence provided by the applicant, the absence of contemporaneous documentation pertaining to this applicant, and the applicant's reliance on affidavits which do not meet basic standards of probative value, it is concluded that he has failed to establish continuous residence in an unlawful status from prior to January 1, 1982 through May 4, 1988, as required. Therefore, the applicant cannot be considered to have met his burden of proof of establishing that he resided in continuous unlawful status in the United States from prior to January 1, 1982 through May 4, 1988, as required. Accordingly, the applicant is ineligible for permanent resident status under section 1104(c)(2)(B) of the LIFE Act.

Although not dealt with in the district director's decision, it is noted that, according to the applicant's own Form for Determination of Class Membership as well as his Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (INA), he departed the U.S. for India in November 1987 in order to visit his family and did not return until January 1988. As the applicant has failed to provide specific day-dates for his November 1987 to January 1988 absence from the U.S., it is concluded in the absence of definitive evidence to the contrary that the applicant's absence exceeded the forty-five (45) day limit allowable for a single absence, as set forth in 8 C.F.R. § 245a.15(c)(1). As the applicant has already been found ineligible for permanent status under the LIFE Act for failure to establish continuous residence in the U.S., however, this matter need not be discussed further.

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