



U.S. Citizenship
and Immigration
Services

12

[REDACTED]

FILE:

[REDACTED]

Office: New York

Date:

SEP 09 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

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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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 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. This decision was based on the district director's determination that the applicant had exceeded the forty-five (45) day limit for single absences from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1).

On appeal, counsel asserts that the applicant has met his burden of proof of providing documentation establishing his having resided continuously in the U.S. from prior to January 1, 1982 through May 4, 1988.

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 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 her decision, the district director determined that the applicant departed the U.S. for his native Egypt in January 1986 and remained abroad until July 19, 1988, at which he was admitted as a B-2 nonimmigrant visitor for pleasure. This would indicate that the applicant had been absent from the United States for approximately two-and-a-half years – far exceeding the 45-days limit allowable for single absences from the U.S. According to the decision, this information was based on the applicant's own testimony taken at the time of his July 8, 2003 adjustment interview at the New York District Office.

On appeal, counsel for the applicant attributes the applicant's responses at his adjustment interview to confusion resulting from his purported lack of fluency in English. It must be noted, however, that immediately prior to his July 8, 2003 interview, the applicant himself signed a written statement under oath and in the presence of the

interviewing CIS officer that he was able to read, speak and write English and was, therefore, prepared for his interview. This does not support counsel's claim that the applicant's interview responses resulted from linguistic miscommunication or, as counsel asserts on appeal, "a language barrier."

Nevertheless, counsel is correct in his assertion that the district office's decision is based solely on the examining officer's account of the applicant's interview responses. Yet, whatever transpired at that interview regarding the applicant's account of his purported 1986 to 1988 absence can be neither confirmed nor denied as it is not supported by any evidence in the record. The only transcript of the interview included consists of a Form I-696 Citizenship and Immigration Services (CIS) adjudicator's worksheet, which does *not* reflect the aforementioned information recorded in the district director's decision. Although the record does contain some relevant passport and travel data, including a photocopy of a B-2 nonimmigrant visa with a July 19, 1988 admission stamp, there is no evidence which might serve to clarify the date and the duration of applicant's departure from the U.S. prior to his return to the U.S. on a B-2 visa.

The fact remains, however, that based on the record, the present applicant has submitted no contemporaneous documentation or third-party affidavits or any other relevant documents to establish his 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 documentation of residence raises serious questions regarding the credibility of his claim. As set forth above, the inference to be drawn from an applicant's documentation shall depend on the *extent* of that documentation. In the present case, that inference can only be negative.

Given the absence of any supporting documentation, it is concluded that the applicant has failed to establish continuous residence 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.