



U.S. Citizenship
and Immigration
Services

L2

[REDACTED]

FILE:

[REDACTED]

Office: Los Angeles

Date:

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.

A handwritten signature in black ink, appearing to read "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 District Director, Los Angeles, 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 submits a brief in which he asserts that the applicant submitted sufficient documentation to establish continuous residence in the United States since prior to January 1, 1982 through May 4, 1988. Counsel submits photocopies of previously provided documentation.

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). Preponderance of the evidence has also been defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979).

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 or about July 26, 1991. 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 addresses:

- 1666 North Avalon, Apt. #3, Wilmington, CA 90744 from November 10, 1981 to May 11, 1987;
- 244 West 103rd Pl., Los Angeles CA 90003 from June 25, 1987 to January 7, 1990; and,

- 284½ East 43rd Pl., Los Angeles, CA 90011 from January 13, 1990 to July 20, 1991, the date the Form I-687 application was executed.

In an attempt to establish continuous unlawful residence since before January 1, 1982, as claimed, the applicant furnished the following evidence:

- An affidavit signed by [REDACTED] who provided his address as [REDACTED] Angeles, CA 90011, and stated that he and the applicant resided together at this address from February 1987 to July 5, 1991, the date the document was executed;
- An affidavit signed by [REDACTED], who provided his address as [REDACTED], CA 90744, and stated that he and the applicant resided together at this address from 1981 to 1987;
- An affidavit signed by [REDACTED] who provided his address and telephone number and indicated that he had known the applicant since 1981 and had always known him to be a law-abiding person of good character;
- A Federal Form W-2 Wage and Tax Statement bearing the applicant's name and address and reflecting wages earned by him in the 1988 tax year from [REDACTED] in Los Angeles, California;
- Photocopies of the applicant's Federal Tax Form 1040 and California State Tax Form 540A for the 1987 tax years.

In his affidavit, [REDACTED] testified that the applicant resided at [REDACTED] in Los Angeles, California from February 1987 to July 1991. However, the applicant specified that did not begin to reside at this address until January 1990 on the Form I-687 application. No explanation was provided for this direct contradiction. As such, the credibility of both [REDACTED] affidavit and the applicant's underlying claim of residence at this address for the period claimed must be considered questionable at best.

Subsequently, on February 11, 2002, the applicant filed his LIFE Act application. Additionally, the applicant provided photocopies of all the affidavits and portions of the tax documents noted above. However, on the Form G-325A, Record of Biographic Information, which accompanied his LIFE Act application, the applicant listed [REDACTED] CA 90011 as his only address in the United States from March 1985 to February 8, 2002, the date the document was executed. This information contradicts the applicant's previous listing of his addresses and periods of residence on his Form I-687 application. The address and corresponding period of residence listed by the applicant on the Form G-325A also contradict the testimony regarding his places and periods of residence as provided by [REDACTED] in each of their respective affidavits.

In response to the subsequent notice of intent to deny, counsel submitted the following new documents in support of the applicant's claim of continuous residence in the United States during the required period:

- An employment letter signed by [REDACTED] who stated that he employed the applicant in landscape and construction at a rate of \$80.00 per week in the period from 1981 to 1987; and,
- A new affidavit signed by [REDACTED] who stated he knew the applicant since his arrival in this country in November 1981. [REDACTED] indicated that he helped the applicant in obtaining employment when he first arrived and that he resided at an unspecified address on 43rd Place in Los Angeles, California from 1984 to 1999.

It must be noted that in his prior affidavit, [REDACTED] testified that he and the applicant resided together at [REDACTED] Wilmington, CA 90744, from 1981 to 1987. [REDACTED]'s new testimony regarding the applicant's places and periods of residence directly contradicted his prior testimony on this subject. [REDACTED] failed to state any reason as to why his prior testimony relating to the applicant's addresses and periods of residence should be disregarded and what had caused him to revise his testimony. Neither the applicant nor counsel provided an explanation for this discrepancy. In addition, neither counsel nor the applicant made any attempt to explain *why*, if the applicant truly had worked for [REDACTED] in the period from 1981 to 1987 as now claimed, he did not previously obtain evidence of such employment from Mr. [REDACTED] and submit this evidence with either his Form I-687 application or his LIFE Act application. Applicants were instructed to provide qualifying evidence *with* their applications and the applicant did include other supporting documentation with both the Form I-687 application and the LIFE Act application. These factors raise serious questions regarding the authenticity and credibility of these supporting documents, as well as the applicant's claim of residence in this country. Given these circumstances, it is concluded that documents provided by the applicant in rebuttal to the notice of intent to deny are of questionable probative value.

The applicant has submitted minimal 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 at least November 1981, this inability to produce more than an absolute minimum of 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 discrepancies and contradictions in information provided by the applicant himself as well as that contained in the supporting affidavits cited above.

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 minimal amount of contemporaneous documentation pertaining to this applicant, outright and direct contradictions and conflicts in testimony, and reliance upon supporting documentation 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, as required.

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