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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



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FILE: [Redacted]

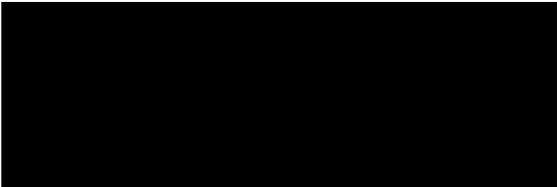
Office: Newark

Date: APR 17 2005

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:



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, Newark, New Jersey, 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, counsel for the applicant asserts that it is unreasonable for Citizenship and Immigration Services (CIS) to require the applicant to submit additional evidence in support of his application since more than twenty years has elapsed since his claimed arrival in the U.S. and many potential affiants and employers are no longer accessible. Counsel further asserts that the applicant has met his burden of proof of establishing by a preponderance of the evidence that he has continuously resided in the U.S. since prior to January 1, 1982, and requests that the district director's decision be rescinded and the application be granted.

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. 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 an attempt to establish continuous unlawful residence since prior to January 1, 1982, the applicant submitted the following:

- An affidavit from [REDACTED] who attests to having known the applicant in the U.S. since 1986;
- An affidavit from [REDACTED] who indicates he is an acquaintance of the applicant and states that he is aware that the applicant was working at the Best of India, Inc., in New York City, from 1983 to 1989;
- An affidavit from [REDACTED] who attests to having known the applicant since March 1982, when he and the applicant began sharing an apartment. In addition, the affiant asserts that the applicant informed him that the applicant had resided in the U.S. since November 1981. The affiant

also indicates he is aware the applicant was working for Best of India, Inc., from January 1983 to June 1989; and

- A declaration from [REDACTED] who indicates the applicant shared the affiant's place of residence from November 1981 to February 82.

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. In this case, 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. from prior to January 1, 1982 through 1986.

The applicant has submitted only four (4) affidavits in support of his claim to continuous residence in the U.S. from prior to January 1, 1982 to May 4, 1988, several of which are lacking basic and necessary information or details and, as such, fall far short of containing what such documents should include in order to render them probative for the purpose of establishing an applicant's continuous unlawful residence during the period in question. The aforementioned affidavit from [REDACTED] attests to the affiant having known the applicant since March 1982. However, the affiant indicates that his knowledge of the applicant having resided in the U.S. since November 1981 is only second-hand, based on having been informed of such by the applicant. According to the affidavit from [REDACTED] the affiant attests to his awareness of the applicant having worked at Best of India, Inc., from 1983 to 1989, without specifying exactly how he came by that awareness. Nor does the affiant in this case provide any information regarding how long he has known the applicant or how long he knows the applicant to have resided in the U.S. Of the four statements provided by the applicant in support of his residence claim, only that from [REDACTED] is indicative of the correspondent having first-hand knowledge of the applicant's purported residence in the U.S. since November 1981. In addition, the applicant's G-325A submitted on March 16, 1998 in conjunction with an I-130 petition for alien relative indicates that his last residence outside the United States for more than one year was a single address in India from 7/55 (the year of his birth) to 12/88, indicating that he lived in India until 1988. This contradiction as to his initial entry further diminishes the credibility of his other documentation.

Given the minimal evidence provided by the applicant, the absence of any contemporaneous documentation pertaining to this applicant, and the applicant's reliance on affidavits many of 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. Accordingly, the applicant is ineligible for permanent resident status under section 1104(c)(2)(B) of the LIFE Act.

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