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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: Baltimore

Date:

AUG 17 2005

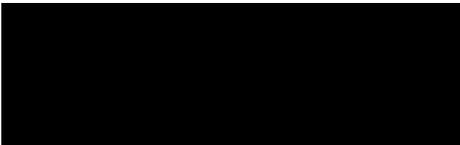
IN RE:

Applicant:



APPLICATION: 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, 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, Baltimore, Maryland, 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 residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant had submitted sufficient evidence to support his claim of continuous residence in this country from January 1, 1982 through May 4, 1988. Counsel contends that the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) has failed to consider that the applicant cannot obtain additional documentation in support of his claim of residence because of the fact that he was an illegal alien during the requisite period as well as the significant passage of time.

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).

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 May 2, 1991. In support of his claim of continuous residence in the United States since prior to January 1, 1982, the applicant submitted an affidavit of residence signed by [REDACTED]. However, in his affidavit, [REDACTED] merely stated that he had known the applicant since 1981, without providing any specific information pertaining to the applicant's residence during the requisite period. Therefore, the probative value of this affidavit must be considered as minimal without specific detailed information relating to the applicant's residence in the United States during the period from prior to January 1, 1982 to May 4, 1988.

Subsequently, on July 31, 2001, the applicant submitted his Form I-485 LIFE Act application. With his LIFE Act application, the applicant included two additional affidavits of residence signed by [REDACTED] and [REDACTED] respectively. However, in his affidavit, [REDACTED] merely stated that he had known the applicant since 1981, without providing any specific information pertaining to his residence during the requisite period. Therefore, the probative value of this affidavit must be considered as minimal without specific detailed information relating to the applicant's residence in the period in question.

On June 11, 2003, the district director issued a notice of intent to deny to the applicant informing him of the Service's intent to deny his LIFE Act application because he failed to submit sufficient evidence of continuous unlawful residence in the United States for the period in question. The applicant was granted thirty days to respond to the notice and provide additional evidence in support of his claim of residence in the requisite period.

In response, counsel provided a statement in which he asserted that the applicant had submitted sufficient evidence to support his claim of continuous residence in this country for the requisite period.

The district director determined that the applicant had failed to establish his claim of residence for the requisite period and denied the application on November 28, 2003. In the notice of decision, the district director noted that a Service officer had attempted to verify information relating to applicant's claim of residence by contacting the affiants who provided supporting statements. The district director stated that only one of the affiants, [REDACTED] had provided a telephone number with which to contact this individual and verify the information contained in the corresponding affidavit. The district director noted that a phone call had been placed to the telephone number attributed to [REDACTED] but was forwarded to an answering machine that provided no identifying information.

On appeal, counsel asserts the it is difficult for the applicant to obtain further evidence of residence in light of the fact that he was an illegal alien during the requisite period as well as the significant passage of time. While counsel's assertion may be sufficient to explain why the applicant was unable to obtain contemporaneous documents, it cannot be considered as a reasonable explanation as to why he did not obtain further affidavits from acquaintances, friends, former employers, or family to corroborate his claim of residence in the United States for the period in question. Additionally, neither counsel nor the applicant provides alternative means to contact any of the three affiants who provided supporting documents, despite being specifically informed that the prior attempt to contact the one affiant who had provided a telephone number had been unsuccessful.

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 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.