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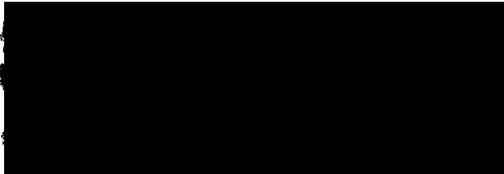


FILE:  Office: Houston Date: **AUG 23 2005**

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, Houston, Texas, 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 since before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant's former employer provided an employment letter in which the date he began employment was mistakenly listed as 1982, rather than the date he actually began working for this enterprise in 1986. Counsel contends that the applicant's former attorney altered his birth certificate to show an earlier date of birth so that his age would tend to correspond to the employment letter. Counsel reiterates the applicant's claim of continuous residence for the requisite period and asserts that he has submitted sufficient evidence in support of this claim. Counsel submits copies of the same documents that were provided in response to the notice of intent to deny.

An applicant for permanent resident status under the LIFE Act 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. *See* § 1104(c)(2)(B) of the LIFE Act and 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 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 January 29, 1991. At part #3 of the Form I-687 application where applicants were asked to list their date of birth, the applicant listed August 3, 1968. As evidence of his identity, the applicant included an original Mexican birth certificate issued May 3, 1990, and a photocopy of another separate Mexican birth certificate issued on December 14, 1994, both of which list his date of birth as August 3, 1968. At part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since first entry, the applicant indicated that he was employed by Aztec Foundation Repair as laborer from November 30, 1982 to December 22, 1990, the date the Form I-687 application was submitted. In addition, it must be noted that the Form I-687 application contains no indication that it was prepared by any individual other than the applicant himself as those portions of the Form I-687 application dedicated to separate preparers at parts #48, #49, #50, and #51 have been left blank.

In support of his claim of residence since prior to January 1, 1982, the applicant submitted the following documents:

- an employment letter signed by [REDACTED] who stated that the applicant worked for Aztec Foundation Repair from November 30, 1982 to January 26, 1991, the date the letter was executed;
- an affidavit of residence signed by the applicant's brother, [REDACTED], who indicated that the applicant lived with him at an address in Houston, Texas from 1981 to 1988;
- an affidavit signed by [REDACTED] who stated that she had known the applicant since 1982 and that he was a good person who could be a good citizen;
- an affidavit signed by [REDACTED] who stated that she had known the applicant since 1982, that he was of good character, and would make a good citizen if given the opportunity;
- an affidavit signed by [REDACTED] who stated that he had known the applicant since 1982, that he was of good character, and would make a good citizen if given the opportunity;
- an affidavit signed by [REDACTED] who stated that he had known the applicant since 1982, that he was honest and of good character, and would make a good citizen if given the opportunity; and,
- an affidavit signed by [REDACTED] who stated that he had known the applicant since 1981, that he was a good person and of good character who neither smoked nor drank, and would make a good citizen if given the opportunity.

The affidavits signed by [REDACTED] and [REDACTED] are of minimal probative value as none of the affiants have provided any direct testimony relating to the applicant's residence in the United States from prior to January 1, 1982 to May 4, 1988. While the affiants alluded to their date of acquaintance with the applicant and his good character, they did not provide any detailed information relating to his residence in this country such as specific addresses and dates of residence at such addresses.

The record shows that the original Mexican birth certificate issued on May 3, 1990, and the photocopied Mexican birth certificate issued on December 14, 1994, that the applicant included with his Form I-687 application were subsequently forwarded to the Immigration and Naturalizations Service's, or the Service's (subsequently Citizenship and Immigration Service, or CIS) Forensic Document Laboratory in McLean, Virginia for microscopic, instrumental, and comparative analysis. The record contains a report that is signed by the Senior Forensic Document Analyst of the Forensic Document Laboratory and dated September 25, 1995. In regards to the original Mexican birth certificate issued on May 3, 1990, the report stated the following:

Although the certificate designated Q-1 above may be genuine, it has been invalidated by alteration. The date of the birth decade and year which appears in two areas of the form

has been altered by erasure and overwriting. Since the top layer of paper has been completely removed, it is no longer possible to ascertain the original entries.

In regards to the separate photocopied Mexican birth certificate issued on December 14, 1994, the report stated the following:

The document designated Q-2 has been copied several times. (In the photocopying process, detail is obscured.) Nevertheless, it is apparent that portions have been "touched up" and possibly altered, as in the authorization signature area where the background printing is no longer present. The digit, "6" types low in all places it appears except for in the date of birth areas. Based on these findings, the copied certificate is unacceptable as proof.

The record further shows that the Service issued a notice to the applicant and his current counsel on October 16, 1995, which specifically informed the parties of the determination that both the original Mexican birth certificate and the separate photocopied Mexican birth certificate had been altered and were not considered as acceptable proof of identity.

A review of the record reveals that a Form I-130, Petition for Alien Relative, was submitted on the applicant's behalf by his brother, [REDACTED] to the Service on April 7, 1997. The applicant included another separate photocopied Mexican birth certificate, which was issued on February 18, 1997 and listed his date of birth as August 3, 1972 as proof of identify.

On April 30, 2002, the applicant submitted a Form I-485 LIFE Act application. The record shows that the applicant failed to submit any new evidence to support his claim of residence in the United States for the requisite period. The applicant included another separate photocopied Mexican birth certificate that was issued on July 20, 2000, and listed his date of birth as August 3, 1972. No explanation was provided by the applicant for the conflicting and contradictory listings of his date of birth in Mexican birth certificates he has submitted to Service in an attempt to establish proof of his identity.

On October 22, 2004, the district director issued a notice of intent to deny in which questioned the veracity of the applicant's claim of residence in this country for the requisite period. Specifically, the district director informed the applicant that he had seriously impaired his credibility by providing disparate information and documents relating to his date of birth. The applicant was granted thirty days to respond to the notice.

Both in response to the notice of intent to deny and on appeal, the applicant submits a statement in which claims that the attorney who had prepared his Form I-687 application had altered the dates of his birth on both the original Mexican birth certificate issued on May 3, 1990, and the photocopied Mexican birth certificate issued on December 14, 1994. The applicant claimed that this was done so that it would appear that he was four years older and correspond to his claim of employment for Aztec Foundation Repair beginning in 1982. The applicant declared that the letter submitted in his support of his claim of employment for Aztec Foundation Repair was in error in that he began working for this enterprise in 1986, and not 1982 as listed in the letter. Counsel reiterates the applicant's claim that the attorney who had prepared his Form I-687 application had altered both the original and photocopied birth certificates so as to correspond to his claim of

employment for Aztec Foundation Repair beginning in 1982. Counsel asserts that the applicant has submitted sufficient evidence in support of his claim of residence in the United States since prior to January 1, 1982.

While both counsel and the applicant contend that an attorney prepared his Form I-687 application and altered the accompanying birth certificates, the record contains no independent evidence to support these contentions. As has been previously stated, the Form I-687 application contains no indication that it was prepared by any individual other than the applicant himself. Even if these claims were viewed in manner most favorable to the applicant, the burden remains with him to ensure that information contained within his application and supporting documents is truthful and accurate. The fact remains that the applicant has seriously undermined his overall credibility by submitting altered documents in support of an application for immigration benefits. In addition, both counsel and the applicant acknowledge that the employment letter from Aztec Foundation Repair erroneously listed the date he began employment with this enterprise as 1982 rather than 1986. However, neither counsel nor the applicant offered any explanation as to how this mistake had been made and why the applicant himself listed 1982 as the date he began employment for Aztec Foundation Repair on the Form I-687 application. The record shows that neither counsel nor the applicant has submitted another letter from this enterprise confirming that an error was made in listing his employment dates, identifying the source and reason for the error, and listing the purportedly correct date he began his employment with Aztec Foundation Repair. The fact that counsel and the applicant admit that this employment letter listed erroneous dates of employment without offering an adequate explanation for such an error only serves to lessen and further impair the credibility of the applicant and his claim of residence in this country for the period in question. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm. 1972).

The affidavits signed by [REDACTED] and [REDACTED] are of minimal probative value as none of the affiants provided any direct testimony relating to the applicant's residence in the United States from prior to January 1, 1982 to May 4, 1988. The remaining evidence submitted by the applicant in support of his claim of residence is an affidavit of residence signed by his brother, [REDACTED]. However, the probative value of the testimony contained in this affidavit must be considered to be limited as such testimony has been provided by the applicant's brother, an immediate family member who must be viewed as having an interest in the outcome of proceedings, rather than an independent and disinterested third party. The applicant provided no explanation as to why he did not submit affidavits containing specific and detailed information pertaining to his residence in the United States during the period in question from individuals with little or no interest in these proceedings such as neighbors, friends, and acquaintances. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I. & N. Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I. & N. Dec. 503, 506 (BIA 1980). In addition, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm. 1972).

Pursuant to 8 C.F.R. § 245a.12(e), the burden remains with the applicant 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. In this current matter, the record contains altered documents that tend to raise grave and negative implications relating to the credibility of the applicant. These factors raise serious questions regarding the authenticity and credibility of the applicant's

claim of residence in this country, as well as any documents submitted to support this claim. Given these circumstances, it is concluded that documents provided by the applicant are of questionable probative value.

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 lack of contemporaneous documentation pertaining to this applicant, 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. Accordingly, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

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