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U.S. Citizenship
and Immigration
Services

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FILE:



Office: LOS ANGELES

Date:

DEC 05 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. Any further inquiry must be made to that office.

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, California, 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 from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel provides additional evidence in support of the appeal.

It is noted that the director, in denying the application, did not address the evidence furnished initially, and in response to the Notice of Intent to Deny, and did not set forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3. As such, the documentation submitted throughout the application process will be considered on appeal.

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 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).

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence throughout the application process:

- Several money order receipt stubs issued in 1983, 1985, 1986, 1987 and 1988.
- An earnings statement for the pay period ending December 1, 1985 from MEI Plastics Inc., in Newbury Park, California.
- Pay stubs issued on August 23, 1985 and September 6, 1985 and a 1985 wage and tax statement from A&D Janitorial in Oxnard, California.

- Two earnings statements for the pay periods ending October 3 and 10, 1985 from Chris-L of California, Inc., in Ventura, California.
- A California identification card issued on October 4, 1985.
- Three pay stubs for the pay periods ending December 21, and 28, 1985 and January 4, 1986 and a 1985 and 1986 wage and tax statement from [REDACTED] in Ventura, California.
- An employment identification card issued on April 13, 1986 and a 1986 wage and tax statement from Garden City in Oxnard, California.
- A 1986 wage and tax statement which reflected the applicant's wages of \$8157.62 for the year. It is noted that the employer's information is illegible.
- Several earnings statements issued during the months of May, June, July, August, October, November and December 1986.
- Several earnings statements issued during the months of January, February, March, April, May and June 1987.
- A bank statement dated June 30, 1987
- Two earnings statements for the pay periods ending October 1, and 17, 1987 from Pacific Rattan Products, Inc., in Los Angeles, California.
- A document from the Archdiocese of Los Angeles dated April 10, 1987 indicating that the applicant had registered with Catholic Charities of Los Angeles in order to determine eligibility for legalization under the Immigration Reform and Control Act of 1986.
- An attestation from Catholic Charities and signed by the applicant on August 24, 1987 regarding his authorization to work.
- A Report of State Income Tax Refund from California indicating the applicant had received a refund for 1987.
- A 1988 wage and tax statement from Shamrock Die Cutting Co., of Los Angeles, California.
- Affidavits from [REDACTED] and [REDACTED] of Goleta, California who attested to the applicant's residence in Solvang, California from January 1987 to April 1988.
- An affidavit from [REDACTED] who asserted that the applicant resided with him from "sometime" in December 1981 until mid January 1982 at [REDACTED]. Mr. [REDACTED] further asserted that the applicant moved to Oxnard, California to reside with his [the applicant's] sister.

- An affidavit from [REDACTED] who indicated that he has been acquainted with the applicant since December 1981.
- A Social Security Statement dated April 19, 2004, which reflected the applicant's earnings from 1985 through 1988.

The applicant submitted several copies of photographs of himself that he claims were taken in 1982, 1983 and 1984; however, said photographs neither imply nor affirm the applicant's residence in the United States during the period in question.

At the time of his initial interview on February 3, 1996, the applicant, under oath, admitted in a sworn statement in his native language that he first entered the United States on January 15, 1982. Based on this statement coupled with the applicant's Form I-687 application, which he claimed residence in the United States since January 1982, and item six of the Form for Determination of Class Membership, which the applicant claimed he first entered the United States in "1/82", the director determined that the applicant had not entered the United States prior to January 1, 1982 and, therefore, was not eligible for the benefit being sought.

As the applicant did not sign the Form for Determination of Class Membership, it has little probative value or evidentiary weight

According to the officer's notes taken at the time of the applicant's LIFE interview on March 23, 2004, the applicant informed the interviewing officer that he first entered the United States on December 15, 1981. Regarding his previous sworn statement, the applicant asserted that he was nervous at the time he signed the statement. Regarding the omission of a residence in 1981 on his Form I-687 application and the notation on his Form for Determination of Class Membership, which listed January 1982 as his first entry, the applicant asserted that he put 82 because he thought they were asking when he was first started to work, and he did not think it was important to list his initial address in Huntington Park because he resided there for only two weeks. The applicant also informed the interviewing officer that on January 5, 1982, [REDACTED] employed him for two months and provided him with room and board, and from March 1982 through 1985 he was employed in landscaping.

In response to the Notice of Intent to Deny issued on July 1, 2004, the applicant asserted that he first entered the United States on December 15, 1981 and resided with [REDACTED] for approximately four weeks at [REDACTED]. Regarding his sworn statement, the applicant asserted that it was incorrect as he was extremely nervous at the time and did not correctly understand the immigration officer. The applicant submitted affidavits from [REDACTED] and [REDACTED] who indicated that they have personally known the applicant since December 15, 1981 and attested to the applicant's residence in Huntington Park for four weeks. Both affiants indicated that the applicant subsequently moved to Oxnard, California and returned to Los Angeles in 1987.

While 8 C.F.R. § 245a.2(d)(3) sets forth specific criteria which affidavits of residence from employers and organizations should meet to be given substantial evidentiary weight, we look to *Matter of E-- M--*, supra, for guidance in determining the appropriate criteria for affidavits from other third party individuals.

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. See *Matter of E-- M--*, supra. In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the

information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The affidavits, however, from Mr. [REDACTED] and Mr. [REDACTED] have little evidentiary weight inasmuch as they do not state the basis of the affiants' knowledge of the applicant.

On appeal, the applicant reaffirmed his entry into the United States on December 15, 1981. The applicant states in part:

On February 3, 1986, I was interviewed by a Legalization Officer in Los Angeles. The officer asked me to write a declaration under oath stating when was my first date of entry into the United States. I stated that I came to the United States on December 15, 1981 and that I started living in Oxnard CA, on January 15, 1982. The officer told me that my statement was incorrect. He tore up that declaration and threw it in the trash can. He said the only date he wanted was the date I first had a fixed address. The officer then asked me to write another statement because I did not have an address when I first came so I did not have anything to prove that I was in California in December 1981. He told me to write a statement saying that I first came to the United States on January 15, 1982 because I had an address to prove that I was here from that date on.

Although the record contains no evidence of a Form I-589 being filed, the applicant asserts that an asylum application was filed on his behalf in 1987, which was subsequently denied. The applicant further asserts that at the time he appeared before an immigration judge, he was asked under oath if he would admit to the allegations contained in the Notice to Appear. The applicant states, "instead of saying I entered on December 15, 1981 thinking I was going to have the same problem as before because I did not have an address, I stated that I had entered on January 1, 1982, the date the immigration consultant had stated on the asylum application he had prepared for me."

Assuming, *arguendo*, that the applicant's first entry into the United States was on December 15, 1981, the fact remains that the applicant has not submitted any evidence to support his assertion that he was gainfully employed during 1982 through 1984 or submitted corroborating evidence from his sister to establish his residence in Oxnard, California during 1982 through 1984. The money order receipts stubs may serve to establish the applicant's presence in the United States in June, August and September 1983, but they do not establish continuous residence. Further, the applicant's assertion that [REDACTED] provided him with room and board from January 5, 1982 contradicts [REDACTED] affidavit that the applicant resided with him until "mid January 1982" and then at the applicant's sister's home.

In light of the fact that the applicant claims to have continuously resided in the United States since 1981, this inability to produce contemporaneous documentation of residence during 1982 through 1984 raises questions regarding the credibility of the claim. It is concluded that the applicant has failed to establish, by a preponderance of evidence, continuous residence for the required period. Therefore, 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.