

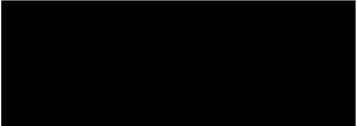
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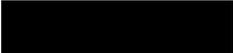


U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:  Office: Seattle

Date: DEC 08 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, Seattle, Washington, 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 Citizenship and Immigration Services (CIS) has concluded that the applicant submitted fraudulent documents consisting of two postmarked envelopes in support of his claim of residence without citing the source relied upon to reach this conclusion. Counsel contends 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.

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. 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. 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 December 11, 1991. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry, the applicant listed [REDACTED] from October 1981 to October 1988 and [REDACTED] from October 1988 to June 1991, and [REDACTED] from June 1991 through the date the application was submitted on December 11, 1991.

In support of his claim of continuous residence in the United States since prior to January 1, 1982 through May 4, 1988, the applicant submitted an affidavit signed by his cousin, [REDACTED] stated that he and the applicant lived together in New York and that they traveled to Canada on July 25, 1987 and returned to New York on August 15, 1987. However, [REDACTED] failed to specify either the dates of residence or the street addresses where he and applicant purportedly resided together in New York. Further, 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 cousin, a family member who must be viewed as having an interest in the outcome of proceedings, rather than an independent and disinterested third party.

Subsequently, on April 29, 2002, the applicant submitted his Form I-485 LIFE Act application. With the Form I-485 LIFE Act application, the applicant provided additional affidavits in support of his claim of residence in this country during the requisite period. The applicant submitted an affidavit signed by his father, [REDACTED] who stated that he accompanied the applicant to New Dehli Airport when he departed India in October 1981 for a trip to the United States. The applicant's father declared that he and his son maintained contact by telephone and his son first resided in New York and then subsequently moved to Seattle, Washington. The applicant's father asserted that his son did not return to India until 1993. However, the applicant's father failed to specify any of the street addresses or corresponding dates of residence that his son purportedly resided in New York or Seattle. Again, 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 father, 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 submitted an affidavit signed by [REDACTED] who stated that he accompanied the applicant to New Dehli Airport when he departed India in October 1981 for a trip to the United States. [REDACTED] declared that applicant did not return to India until 1993. However, [REDACTED] failed to specify any of the street addresses or corresponding dates of residence that the applicant purportedly resided in the United States during the requisite period. The applicant included an affidavit signed [REDACTED] who asserted that he had personal knowledge that the applicant resided in the United States when they met at a [REDACTED] in New York. Although [REDACTED] attested to the applicant's residence in this country since 1981, he failed to provide any relevant and specific information detailing the applicant's residence (such as place and dates of residence) in the United States during the period in question. The applicant also submitted an affidavit signed by [REDACTED] who declared that the applicant resided in this country since October 1981, and that the applicant subsequently visited him for three weeks at his home in Vancouver, Canada in July 1987. However, [REDACTED] failed to provide any detailed or specific testimony relating to the applicant's alleged residence in this country such as the exact location of his residences and the corresponding dates that he resided at each location in the period from prior to January 1, 1982 to May 4, 1988.

On June 21, 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 credible 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, the applicant submitted the following relevant documents: two original postmarked envelopes, four original handwritten rent receipts, and an original receipt from [REDACTED] in Charlotte, North Carolina reflecting the purchase of a two head wireless VHS.

The two postmarked envelopes provided by the applicant contain cancellation marks of November 10, 1981 and May 3, 1987 respectively and were addressed to the applicant at [REDACTED]. However, a review of the [REDACTED] at [REDACTED] revealed that each of these postmarked envelopes have stamps that were issued well after the cancellation marks on each respective envelope. The envelope postmarked

November 10, 1981 has a stamp featuring a Leopard Cat with a value of five hundred paise (100 paise = 1 rupee) that was introduced by the Indian government on April 30, 2000. The envelope postmarked May 3, 1987 has a stamp featuring [REDACTED] with a value of one hundred paise that was introduced by the Indian government on the anniversary of the birthday of [REDACTED] on January 23, 2001. The fact the envelope postmarked November 10, 1981 contains a stamp that was issued on April 30, 2000 and the envelope postmarked May 3, 1987 contains a stamp that was issued January 23, 2001 tends to establish that the applicant utilized documents in a fraudulent manner in an attempt to support his claim of residence in the United States for the requisite period.

The applicant also submitted four handwritten receipts April 1, 1986, May 1, 1986, June 1, 1986, and July 1986, respectively, which appear to reflect that the applicant paid rent of \$300.00 per month for a residence at [REDACTED] in an unspecified location. However, a comparison of this address with those addresses of residence listed by the applicant at part #33 of the Form I-687 application revealed that he never listed this particular address as an address of residence. The fact that the applicant utilized rent receipts for an address where he never claimed to reside can only serve to further undermine his claim of residence in the United States for the period in question.

The applicant also included an original receipt dated June 21, 1986 from [REDACTED] in Charlotte, North Carolina reflecting the purchase of a two head wireless VHS. However, the receipt contained no information pertaining to the applicant or his claimed residence in this country. Without information to directly link the receipt to the applicant, the receipt must be considered to be of minimal probative value

The district director determined that the applicant had failed to establish his claim of residence for the requisite period and denied the application on August 12, 2004.

On appeal, counsel asserts that Citizenship and Immigration Services (CIS) has concluded that the applicant submitted fraudulent documents consisting of two postmarked envelopes in support of his claim of residence without citing the source relied upon to reach this conclusion. Although counsel is correct in stating that no authority was cited by the district director as the source for the determination that the Indian stamps on the two postmarked envelopes were issued well after the cancellation marks on the envelopes, a review of the record reveals pages of printouts from the [REDACTED] website at [REDACTED] relating to the issue dates of the two stamps in question were placed into the record of proceedings prior to the district director's denial of the application on August 12, 2004. Consequently, the fact remains that the applicant utilized the postmarked envelopes in a fraudulent manner in an attempt to support his claim of residence in the United States for the requisite period. In addition, neither counsel nor the applicant addressed the four receipts submitted by reflecting his payment of rent for a residence from April 1, 1986 to July 31, 1986 at an address that he never listed as an address of residence on the Form I-687 application.

Counsel contends 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. None of the affidavits submitted in support of the applicant's claim of residence in the United States from prior to January 1, 1982 to May 4, 1988 contains a complete attestation with specific and detailed information referencing his residence in this

country for the entire period. The probative value of the testimony contained in these affidavits is both limited and impaired by the lack of sufficient detailed information specifically relating to the applicant's claim of residence, such as locations and dates of residence for the complete requisite period. The absence of sufficiently detailed supporting documentation and the existence of conflicting testimony that contradicts the applicant's own claim of residence seriously undermines the credibility of the supporting documents, as well as the credibility of the applicant's claim of residence in this country for the requisite period. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Counsel fails to put forth any compelling reason that would warrant the verification of documentation that provides neither extensive nor credible information to corroborate the applicant's claim of residence. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he or she has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989).

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 applicant's reliance upon affidavits documents with minimal probative value, as well as contemporaneous documents with no credibility, 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.