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U.S. Citizenship  
and Immigration  
Services

**FEB 04 2005**

FILE:

Office: Los Angeles

Date:

IN RE:

Applicant:

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.

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, 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 requested additional time in which to respond to the district director's denial. Subsequent to the appeal, counsel submits a brief along with additional evidence in support of the applicant's claim to continuous residence in the U.S. during the period in question.

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 submits the following:

- An affidavit from [REDACTED] attesting to having employed the applicant as a gardener from February 1982 to October 1984;
- A letter from [REDACTED] of Gaylan Industries, Inc., indicating the applicant worked as machine operator for that firm from October 2, 1984 to June 5, 1991;
- Earnings statements made out to the applicant from Gaylan Industries dating from 1984 through 1989;
- Photocopies of completed Form 1040A Income Tax returns in the applicant's name, dating from 1984 to 1988;

- An affidavit from [REDACTED] who indicates he was the applicant's landlord from January 1988 to October 1991;
- An affidavit from [REDACTED] dated July 6, 1992, who indicates he was the applicant's landlord from January 1982 to December 1987, during which time the applicant resided at [REDACTED] Anaheim, California; and
- Affidavits from [REDACTED] both of whom attest to the applicant's having resided in Anaheim, California, since January 1982.

The regulations at 8 C.F.R. § 245a.2(d) provide a list of documents that may establish continuous residence and specify that "any other relevant document" may be submitted. The applicant in this case has provided contemporaneous evidence, affidavits and third-party statements which could possibly be considered as evidence of continuous residence during the period under discussion. In the Notice of Intent to Deny, however, the district director determined that the evidence submitted in support of the application failed to establish that the applicant had entered *prior to* January 1, 1982, as required by 8 C.F.R. § 245a.11(b) for eligibility to adjust to permanent residence under the LIFE Act. On the applicant's Form I-687 Application for Status as a Temporary Resident as well as on his Form for Determination of Class Membership -- both completed on June 30, 1993 -- he specified that he *first* entered the U.S. on *January 1982*. In addition, according to the notes of the examining Immigration and Naturalization Service (INS) officer on the occasion of the applicant's class membership interview on November 29, 1993, the applicant specified under oath and in writing that his first entry into the U.S. occurred *on* January 1, 1982. Moreover, the affidavits submitted in support of the applicant's claim to continuous residence attest to his residence in the U.S. only *since* January 1982.

In response to the notice of intent, the applicant provided a personal statement dated November 17, 2003 in which he claims that a prior immigration consultant had assured him that he only needed to show physical presence in the U.S. since January 1, 1982. However, the assistance of a third party does not negate the responsibility of an applicant to submit an application in which the information set forth is accurate and demonstrates compliance with the pertinent qualifications required to demonstrate eligibility for permanent residence under the LIFE Act.

On appeal, counsel submits a brief in which he contends that, throughout the application process, the applicant has failed to appreciate the fine distinction between residency "since 1-1-82" and residency "prior to 1-1-82." However, notwithstanding counsel's contention, any applicant applying for an immigration benefit, in this case adjustment to permanent resident status under the LIFE act, must assume the burden of familiarizing himself and demonstrating compliance with all the pertinent requirements involved in establishing eligibility for that particular benefit.

The applicant, on appeal, submits the following in support of his claim to have resided in the U.S. before January 1, 1982:

- A subsequent affidavit from [REDACTED] dated December 7, 1993, in which the affiant states that he was the applicant's landlord from October 1981 to January 1982, during which time the applicant resided at [REDACTED] California; and

- An affidavit from [REDACTED] who states that he and the applicant became roommates at [REDACTED] California, immediately after the applicant's October 16, 1981 arrival in the U.S.

In his subsequent affidavit purportedly taken on December 7, 1993 and submitted by the applicant on appeal, [REDACTED] attests to having been the applicant's landlord at the time the applicant resided at [REDACTED] California, from October 1981 to January 1982. However, in his initial affidavit of July 6, 1992, the same affiant attested to having been the applicant's landlord from January 1982 to December 1987, at which time the applicant resided at [REDACTED] California. In light of the information provided in his previous affidavit, it is reasonable to expect the affiant to explain why he is now providing information at variance with that included in his previous affidavit of residence. Yet [REDACTED] offers no explanation whatsoever. Accordingly, the subsequently-submitted affidavit from this affiant must be deemed less than credible.

Similarly, the applicant fails to account for why the affidavit from [REDACTED] was not submitted until after the applicant had received the district office's notice of intent to deny. This, in turn, creates considerable doubt regarding the affidavit's reliability. Moreover, [REDACTED] statement that he and the applicant resided [REDACTED] California after the applicant's arrival in the U.S., is inconsistent with the applicant's I-687 application, which makes no reference to the applicant *ever* having resided at that address. This inconsistency further diminishes the credibility of the affidavit from [REDACTED].

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, neither counsel nor the applicant have attempted to provide credible evidence establishing the applicant entered the U.S. *prior to* January 1, 1982. Nor have they endeavored to explain, address or resolve the aforementioned discrepancies in the record, which, in turn, seriously diminish the credibility of the applicant's claim and supporting documentation. Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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 failure to establish his entry into the U.S. and his residence *before* January 1, 1982, his inability to credibly resolve the inconsistencies and discrepancies raised in his claim and supporting documentation, and the lack of contemporaneous evidence prior to 1984, 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.