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U.S. Citizenship
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Services

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FEB 08 2005

FILE: [Redacted]

Office: Houston

Date:

IN RE: Applicant: [Redacted]

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, 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, the counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the U.S. from prior to 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. 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 December 21, 1989. On the Form I-687 application, the applicant indicated that he first entered this country without a visa by crossing the border at Laredo, Texas without being inspected by an officer of the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS). At part #33 of the Form I-687 application where applicants were asked to list all residences on the United States from the date of their first entry, the applicant listed the following addresses:

- [REDACTED] from October 1981 to August 1985;
- [REDACTED] from August 1985 to May 1989; and,
- [REDACTED] from May 1989 to December 21, 1989, the date the application was submitted.

In addition, at part #35 of the Form I-687 application where applicants were asked to list all absences from the United States since the date of their first entry, the applicant listed "none."

With the Form I-687 application, the applicant submitted a "Form for Determination of Class Membership in *CSS v. Meese*" that is signed by the applicant and dated December 21, 1989. At question #6 of the determination form where applicants were asked to list the date of their first entry into the United States, the applicant listed "October 1981." At question #7 of the determination form where applicants were asked whether they had continuously resided in this country in an unlawful status since prior to January 1, 1982, the applicant responded "yes." At question #8 of the determination form where applicants were asked when they last departed the United States after May 1, 1987, the applicant answered "I have not departed." And at question #9(a) of the determination form where applicants were asked to list the date of their departures from the United States, the applicant listed "N/A."

With the Form I-687 application, the applicant also included the following documents in support of his claim of continuous residence in the United States since prior to January 1, 1982:

- An employment letter signed by [REDACTED] owner of Prince International in Los Angeles, California, who stated that he had employed the applicant as a packer at this enterprise from August 1985 to May 31, 1989;
- An employment letter signed by [REDACTED] manager of the Shalimar Theatre in Houston, Texas, who declared that the applicant was employed by this enterprise as a cleaning and maintenance assistant from October 1981 to May 1985; and,
- An affidavit of residence that is signed by [REDACTED] who declared that he and the applicant resided together at [REDACTED] California from August 1985 to September 1989, and then again at [REDACTED] from September 16, 1989 to December 1989.

As noted above, the applicant indicated that he resided at [REDACTED] from August 1985 to May 1989, and then at [REDACTED] from May 1989 to December 1989. The testimony of [REDACTED] in his affidavit regarding the dates that he resided with the applicant at these respective addresses conflicts with the applicant's listing of the dates he resided at these addresses on the Form I-687 application. The applicant failed to advance any explanation for this conflict.

Subsequently, on May 23, 2002, the applicant filed his LIFE Act application. With his LIFE Act application, the applicant provided a Form G-325A, Record of Biographic Information, in which he indicated that he had been married to his wife in Bombay, India on January 6, 1985. The fact that the applicant acknowledged that he was absent from the country when he was married in India on January 6, 1985, directly contradicted his prior claim on both the Form I-687 application and the determination form that he had no absences from the United States in the period from prior to January 1, 1982 to May 4, 1988. The applicant failed to put forth any explanation as to how he was married in India in 1985, while claiming that he had no absences from this country in the requisite period. The applicant has not provided any explanation as to why this absence was not listed at part #35 of the Form I-687 application or on the relevant sections of the determination form.

The record shows that the applicant subsequently appeared for the requisite interview relating to his LIFE Act application at the Service's Houston District Office on May 1, 2003. During the course of this interview, the applicant testified that he first entered the United States at Laredo, Texas, without being inspected by a Service officer in August 1981. The applicant further testified that he was absent from this country on two occasions during the period from January 1, 1982 to May 4, 1988, when he traveled to India to get married in

January 1985 and then again when he went to India to see his wife in August 1985. The applicant declared that the length of each of these two absences was fifteen days, and that on each occasion he returned to the United States by crossing the border without inspection. The record shows that the applicant also provided a corresponding signed sworn statement reflecting such testimony at his interview.

At the time of his interview on May 1, 2003, the applicant provided the following additional documents in support of his claim of residence in the United States since prior to January 1, 1982:

- A new employment letter signed by [REDACTED] manager of the Shalimar Theatre in Houston, Texas, who declared that the applicant was employed by this enterprise as a cleaning and maintenance assistant from October 1981 to May 1985;
- An affidavit of residence that is signed by [REDACTED] who stated that he first entered the United States in 1983, and had personal knowledge that the applicant resided in this country since 1981 as he had visited him in Houston, Texas, in Los Angeles, California, and again in Houston, Texas;
- An affidavit of residence that is signed by [REDACTED] who indicated that he had knowledge that the applicant resided in the United States since 1981, and declared that he and the applicant resided together at the [REDACTED] located at [REDACTED] from 1981 to 1985;
- An affidavit of residence that is signed by [REDACTED] who declared that he and the applicant resided together at [REDACTED] from 1985 to 1989; and,
- A customer receipt bearing the applicant's name from the [REDACTED] in Freeport, Texas, which purportedly reflects a purchase of unspecified items for \$19.25 on April 27, 1982.

As previously discussed, the applicant indicated that he resided at [REDACTED] from October 1981 to August 1985, and [REDACTED] from August 1985 to May 1989, at part #33 of the Form I-687 application. The testimony of both [REDACTED] and [REDACTED] regarding the applicant's addresses of residence for each respective period is directly contradicted by the applicant's listing of his residences on the Form I-687 application. The testimony of [REDACTED] regarding the applicant's address of residence in Los Angeles, California from 1985 to 1989, also directly conflicts with the testimony contained in the previously noted affidavit of [REDACTED] regarding the applicant's address in Los Angeles for this same period.

In addition, it must be noted that the customer receipt from the [REDACTED] that the applicant provided in support of his claim of residence mostly closely resembles a credit card receipt issued by a gas station as it includes printed notations and sections such as Diesel, Unlead, Super Unlead, Regular, For Fleet Card Use, and D/L No. & State. The receipt also contains the following printed notation in red ink along the right side, "FORM 1085 REV. 8-95." This printed notation clearly demonstrates that the format of such receipts was revised in August of 1995, and that this particular receipt had been manufactured and printed subsequent to the date of the August 1995 revision. As such, it is unlikely that such receipt could reflect the purported sale of items to the applicant in April of 1982, well over thirteen years prior to the revision in format of the receipt in August 1995.

The discrepancies, contradictions, conflicts, and omissions cited above call into question the credibility of the applicant's claim of residence in this country in the requisite period, as well as the credibility of the documentation submitted in support of that claim.

The record shows that the district director subsequently issued a notice of intent to deny to the applicant on November 24, 2003, in which the veracity of his claim of continuous residence in this country from prior to January 1, 1982 was questioned. Specifically, the district director took issue with the circumstances surrounding the applicant's two absences from this country in 1985, the dates that the applicant's children were conceived, circumstances relating to the applicant's purported lawful entry into this country in September of 1989, and the previously discussed discrepancy in dates contained within the customer receipt from the [REDACTED]. However, the relevancy of events that occurred subsequent to the termination of period of unlawful residence in this country on May 4, 1988, is minimal in the current proceedings and not the focus of an examination of this particular applicant's claim of residence for the requisite period. Furthermore, an analysis of dates that the applicant's children could have been conceived is immaterial as the applicant has acknowledged that he was absent from this country in India when his children were conceived. The relevant issue to be examined in these proceedings is the credibility of the applicant's claim of continuous residence in this country since prior to January 1, 1982, in light of the testimony he has provided and the testimony contained within documents he submitted in support of this claim.

In response to the notice of intent to deny, counsel submitted a statement in which he acknowledged that the applicant had been absent from the United States on two occasions during the requisite period. Counsel declared that the applicant's two absences from this country were trips of short duration in January 1985 and August of 1985. However, counsel failed to explain why the applicant omitted these absences at part #35 of the Form I-687 application and the relevant sections of the determination form.

Counsel asserted that the applicant was unaware of any discrepancy in dates on the customer receipt from the [REDACTED] when he found this purportedly twenty-year old document in his files. Counsel contended that it was unlikely that this receipt had a revision date of August 1995, as it was an informal hand-written receipt reflecting the sale of items to the applicant on April 27, 1982. While the receipt does contain hand-written and machine printed notations that were added after its manufacture, counsel's characterization of this document as an informal hand-written receipt is incorrect. As discussed previously, this receipt contains the following printed notation in red ink along the right side, "FORM 1085 REV. 8-95." This printed notation is overwhelming evidence that the format of such receipts was revised in August of 1995, and that this particular receipt had been manufactured and printed subsequent to the date of the August 1995 revision. Therefore, such receipt cannot be considered as a credible document that corroborates the applicant's claim of residence in the period in question.

The district director concluded that 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 and, therefore, denied the LIFE Act application on February 6, 2004.

On appeal, counsel reiterates that the applicant had been absent from this country on two occasions during the requisite period when he departed for short trips in January 1985 and August 1985. Counsel now declares that the applicant reentered the United States at Laredo, Texas and presented himself for inspection and questioning by a Service officer on both occasions. Counsel claims that the Service officers who admitted the applicant directed him to proceed into the United States without asking him any questions. However, counsel

failed to provide any evidence to corroborate his assertions regarding the manner the applicant reentered the United States after his absences in January 1985 and August 1985. Furthermore, counsel's claim that the applicant presented himself to a Service officer for inspection at the border each time he reentered this country on these dates directly contradicts the verbal and written testimony previously provided by the applicant at his interview on May 1, 2003, in which he stated that he entered without inspection when he returned to the United States in January 1985 and August 1985. Therefore, counsel's statements indicating that Service officers at a port of entry allowed the applicant admission into this country without either requesting documents to establish his nationality and country of citizenship or asking him questions of any nature cannot be considered as persuasive.

Counsel asserts that it was not possible that the customer receipt from the [REDACTED] had a revision date of August 1995 because as it was an informal hand-written receipt. However, this receipt is not informal in that it most closely resembles a credit card receipt from a gas station with numerous printed notations and sections, including the printed notation in red ink along the right side, "FORM 1085 REV. 8-95." This notation is overwhelming evidence that the format of such receipts was revised in August of 1995, and that this particular receipt had been manufactured and printed subsequent to the date of the August 1995 revision.

The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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 applicant has submitted documents in support of his claim of residence that contain testimony that directly contradicts and conflicts with information the applicant provided on the Form I-687 application relating to his residences in the United States. Furthermore, the applicant failed to include two subsequently acknowledged absences from this country when he provided a listing of his absences at both part #35 of the Form I-687 application and the relevant sections of the determination form. 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.

The applicant has failed to submit any credible contemporaneous documentation to establish presence in the U.S. from the time he claimed to have commenced residing in the United States. In light of the fact that the applicant claims to have continuously resided in the United States since at least 1981, this inability to produce any credible and contemporaneous documents to support his claim of residence raises serious questions regarding the credibility of the claim. The credibility of the applicant's claim of residence is further diminished by the discrepancies, contradictions, conflicts, and omissions cited above.

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, the applicant's initial failure to provide required information relating to his absences from this country, 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.

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