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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: Chicago

Date: FEB 16 2005

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 Interim District Director, Chicago, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the evidence provided by the applicant had failed to establish 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 asserted that the district office appears to have arbitrarily denied his client's application without having attempted to evaluate the adequacy or credibility of the supporting evidence provided by the applicant. In addition, counsel requested a copy of the record of proceedings relating to the applicant's adjustment application. On December 15, 2004, this office responded to counsel's request by forwarding the requested material and providing an additional 30 days in which to submit further evidence or statements. As of this date, however, no further submissions have been received from counsel. Accordingly, the appeal will be adjudicated on the basis of the documentation now included in the record of proceedings.

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:

- A personal affidavit from the applicant, who attests to having continually resided in the U.S. since 1981, where he performed odd jobs in a self-employed capacity;

- An affidavit from [REDACTED] who attests to having known the applicant since June 1981, and to the applicant having been employed as a gardener since March 1988; and
- An affidavit from [REDACTED] who attests to having known the applicant since 1981, and to having visited the applicant at his [then] current address of residence.

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. The applicant in this case has submitted no contemporaneous documentation to establish presence in the U.S. from the time he claimed to have commenced residing in the U.S. from prior to January 1, 1982 through 1986. In light of the fact that the applicant claims to have continuously resided in the U.S. since 1981, this inability to produce contemporaneous documentation of residence during this period raises serious questions regarding the credibility of the claim.

In support of his claim to continuous residence in the U.S. since 1981, the applicant's case has submitted only two (2) affidavits from acquaintances. Neither affidavit is accompanied by the affiants' phone numbers and, therefore, fail to provide a means by which the affiants may be readily contacted for purposes of verification. Moreover, the affiants, while indicating they are personally aware of the applicant's residence since 1981, have failed to provide any details regarding the nature of their relationships or the basis for their continuing awareness of the applicant's residence. The affidavit from [REDACTED] attests to the affiant having visited the applicant at his current address of residence, but makes no mention of the applicant's *prior* residences going back to 1981, when the affiant claims to have first become acquainted with the applicant.

Given the minimal evidence provided by the applicant, the absence of contemporaneous documentation pertaining to this applicant, and the applicant's reliance on affidavits which do not meet basic standards of probative value, 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. Therefore, the applicant cannot be considered to have met his burden of proof of establishing that he resided in continuous 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(c)(2)(B) of the LIFE Act.

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