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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: Los Angeles

Date: FEB 25 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:

Self-represented

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

On appeal, the applicant reaffirms his claim to have continuously resided in the U.S. since 1981. The applicant further asserts that, due to the passage of time and several successive relocations to other residences, he no longer possesses original documentation which might have served to support his claim to continuous residence.

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).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.

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). Preponderance of the evidence has also been defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5<sup>th</sup> ed. 1979).

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).

In an attempt to establish continuous unlawful residence since before January 1, 1982, as claimed, the applicant furnished the following evidence:

- An affidavit from [REDACTED], attesting to the applicant having departed the U.S. for Mexico in 1987, and having returned to the U.S. two weeks later;
- Photocopied rent receipts made out to the applicant from [REDACTED] dating from 1982 and 1983;
- A photocopy of a personal money order dated July 30, 1984, which is made out by the applicant to his spouse, [REDACTED]

- An affidavit from [REDACTED] who attests to the applicant having resided in the U.S. since April 1981; and
- Remitter's receipts dated April 24, 1981 and August 28, 1981, respectively, from Farmers & Merchants Bank, Long Beach, California, both of which show the applicant as purchaser.

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. However, while the residence affidavit, rent receipts and photocopied money orders provided by the applicant could possibly be considered as evidence of continuous residence during the period under discussion, certain questions have arisen with regard to discrepancies in the applicant's documentation which impact on the overall credibility of his claim.

The applicant has claimed to have resided continuously in the United States since 1981. The record indicates that, on the occasion of the applicant's February 12, 2003 adjustment interview at the Los Angeles district office of Citizenship and Immigration Services (CIS), the applicant was requested to submit evidence indicating continuous presence in the U.S. from 1985 through 1988. However, in the notice of intent to deny, the district director observed discrepancies in this documentation. Specifically, the aforementioned rent receipts submitted by the applicant indicate that in 1982 and 1983, he resided at [REDACTED]. However, according to the applicant's own Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (INA), he resided at [REDACTED] California, and did not begin residing at [REDACTED] California, until after July 1990. The applicant, on appeal, does not attempt to explain, resolve or rebut this inconsistency.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center [or other office] does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis). While not raised in the district director's notice of intent, an additional discrepancy involving the applicant's claim and documentation concerns his presence in the U.S. during the period from 1981 through 1988. On the applicant's G-325A Biographic Information Form, submitted along with his LIFE application, he indicated he was married in Jaripo, Mexico on September 27, 1983. It was also noted in the officer's transcript of the applicant's adjustment interview that, according to the applicant's LIFE Application, one of his children [REDACTED] was born on August 30, 1984 [the I-687 indicates the child was born in Mexico, as was a subsequent child]. This lends additional support to the applicant having resided in Mexico during the year prior to the child's birth. However, at item 35 of his I-687 application, in which an applicant is requested to list any and all absences from the U.S. since January 1, 1982, the applicant indicated that his only departure from the U.S. occurred in July 1987 when he traveled to Mexico due to his wife's illness and, according to the aforementioned affidavit from [REDACTED] returned two weeks later to the U.S. There is no further mention on the I-687 of the applicant having been absent from the U.S. during 1983.

As noted above, an applicant for permanent residence under the LIFE Act must establish that no single absence from the United States has exceeded *forty-five (45) days*. In this case, neither on his I-687 application nor on the occasion of his adjustment interview has the applicant endeavored to provide *any* information indicating that he departed the U.S. for Mexico in September 1983 for the purpose of getting married; nor has the applicant made any attempt to clarify the duration of that departure.

There is no attempt by the applicant to resolve these serious discrepancies in the documentation which, in turn, diminish the credibility of the applicant's claim and supporting evidence. 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).

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 provided only one affidavit in support of his claim to continuous residence in the U.S. during the period in question. On appeal, the applicant asserts that at one time he had additional supporting documentation at his disposal but that, over the years, this material has gotten lost during successive relocations. However, as the applicant has claimed to have continuously resided in the U.S. since 1981, it would not be unreasonable to expect him to be able to provide additional supporting third-party statements or affidavits attesting to his residence during the period in question.

It is concluded that the applicant has failed to credibly establish having continuously resided in the U.S. in an unlawful status 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.