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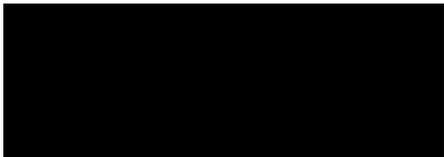
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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

L2



FILE:



Office: Houston

Date: JAN 06 2005

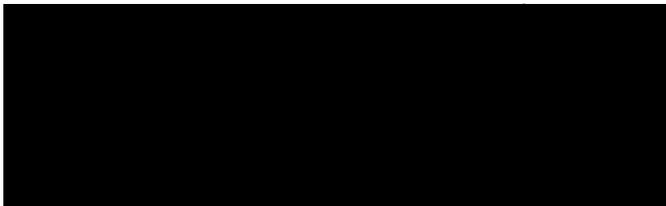
IN RE:

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

The district director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel submits a brief in which he asserts that the applicant has submitted sufficient evidence to establish continuous residence in the United States from prior to January 1, 1982 to May 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 INA on or about April 11, 1991. At part #35 of the Form I-687 application where applicants were asked to list all absences from the United States beginning from January 1, 1982, the applicant listed only one absence from this country when he traveled to Colombia to visit his family in July 1987.

The record shows that the applicant subsequently filed his Form I-485 LIFE Act application on March 12, 2002. With his LIFE Act application, the applicant included a photocopy of the birth certificate of his daughter [REDACTED]. The birth certificate shows that the applicant's daughter was born in Cucuta, Colombia on May 6, 1984. The birth certificate contains the applicant's signature acknowledging that he is the child's father and reflects that the birth of the applicant's daughter was registered on June 5, 1984. While the birth certificate contains an official stamp, it is impossible to discern whether such stamp contains any date due to quality of the copy. On the same photocopied page and below the actual birth certificate is an additional official seal dated June 26, 2001 and signed by [REDACTED] notary of Cucuta, Colombia, attesting to the fact that the photocopy of the birth certificate coincides with the original birth certificate as contained in the civil register of Cucuta, Colombia.

On October 21, 2003, the district director issued a notice informing the applicant of the Service's intent to deny his LIFE Act application. Specifically, the district director noted that the applicant had failed to disclose

that he had been absent from the United States when he was in Colombia in 1984. The district director stated that fact that the applicant had signed his daughter's birth certificate in 1984 was evidence that he had been residing in Colombia at that time, rather than the United States as claimed. In addition, the district director concluded that applicant's credibility was further lessened because a listing of his employment history at part #33 of the Form I-687 legalization application did not include any employment for MM Prosecon Corporation, yet he had submitted an employment letter from this enterprise reflecting his employment from 1981 to 1984.

While the district director determined that the applicant's credibility had been affected by the apparent discrepancy relating to his employment history, this discrepancy is considered to be minimal and will not be considered in determining the credibility of his claim of residence in the United States for the requisite period.

In response, counsel submits photocopies of relevant sections of Colombian law relating to the registration of a child's birth, and a letter and corresponding English translation from a Colombian attorney. Counsel contends that these documents establish that while the birth of the applicant's daughter was registered on June 5, 1984, he did not sign this document until a later unspecified date.

These documents clearly establish that under the pertinent Colombian law relating to the registration of the birth of a child, a public official shall not authorize permanent registration when a requirement for registration is lacking and prevents the authorization. The registration remains suspended, then, until the time when the missing requirements are fulfilled. In all cases, the public official shall certify with his signature that an effort to fulfill the requirements for registration was subscribed to in his presence, with indication of the date that this occurred. When all the missing requirements are fulfilled, the public official shall authorize the register with his signature, leaving specific proof of the date of said authorization. However, the photocopy of the birth certificate contains no indication that any requirement for the registration of the birth of the applicant's daughter was unable to be fulfilled on June 5, 1984. In addition, the photocopy of the birth certificate contains no indication that any public official provided a signature or date to reflect any subsequent authorization of the register. As noted above, Colombian law specifically requires a public official to provide their signature and the date in those instances when a requirement for registration is lacking and prevents authorization, and then another separate signature and date when such missing requirements are fulfilled and final authorization is subsequently provided. Furthermore, while the applicant, counsel, and the Colombian attorney all assert that he provided his signature to the document on a date subsequent to June 5, 1984, none of these individuals has specified the date such action allegedly occurred. Without any definitive evidence to the contrary, it must be concluded that the applicant signed the civil register reflecting his daughter's birth and acknowledging his paternity in Cucuta, Colombia on June 5, 1984.

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).

The statements on appeal by counsel regarding the sufficiency of documentation provided by the applicant in support of his claim of residence in this country for the period from prior to January 1, 1982 to May 4, 1988 have been considered. However, 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 a photocopy of the birth certificate of his daughter. This document demonstrates that he was in Colombia to register the birth of his daughter on June 5, 1984, and that he affixed his signature to the original document that is contained in the civil register of Cucuta, Columbia on such date. The information contained in the photocopied birth certificate directly contradicts the applicant's claim of continuous residence in the United States in the requisite period. The applicant continues to insist that he was in this country and not in Colombia on June 5, 1984, but has failed to provide any credible evidence to support this claim. 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.

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 fact a document provided by the applicant himself establishes that he was in Colombia on June 5, 1984, it cannot be concluded that he has sufficiently demonstrated continuous unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act.

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