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U.S. Citizenship
and Immigration
Services



JAN 21 2005

FILE:

Office: HOUSTON, TEXAS

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, Houston, Texas, 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 asserts that the applicant completed his high school education in El Salvador at the end of October or beginning of November 1981. Counsel asserts that the applicant arrived in the United States in November 1981 and that the applicant has left the United States two times since his arrival in November 1981. Counsel submits additional evidence and copies of evidence previously submitted.

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).

Although Citizenship and Immigration Services (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 submitted the following:

- A form affidavit from [REDACTED] dated January 4, 1990, asserting that he has known the applicant since January 3, 1982, that they are friends, and that he sees the applicant on a weekly basis;
- A form affidavit from [REDACTED] dated January 5, 1990, asserting that he has known the applicant since December 14, 1981, and that he and the applicant are friends and co-workers;
- A form affidavit from [REDACTED] dated January 5, 1990, asserting that he has known the applicant since January 1982, that he sees the applicant on a daily basis, and that he and the applicant are neighbors;
- A form affidavit from [REDACTED] dated January 5, 1990, asserting that he employed the applicant at [REDACTED] a contract laborer two days a week from August 1987 to the present. The affiant stated that the applicant was always paid in cash;
- A form affidavit from [REDACTED] dated January 6, 1990, asserting that he employed the applicant as a contract laborer for an unnamed employer two days a week from March 25, 1986 to July 15, 1987. The affiant stated that the applicant was always paid in cash;

- A form affidavit from [REDACTED] dated January 4, 1990, asserting that he employed the applicant as a general laborer for an unnamed employer from January 1, 1982 to March, 1986. The affiant stated that the applicant was always paid in cash; and,
- An affidavit from [REDACTED] dated November 18, 2003, who asserts that she can attest to the applicants continuous presence in the U.S. since November 1981 because the applicant came to her to borrow \$500.00 in November 1981.

On October 21, 2003, the director sent the applicant a notice of intent to deny. The director pointed out that based on the applicant's date of birth on August 27, 1964, his 12 years of education and four years of work experience in El Salvador, he could not have arrived in the U.S. prior to 1984. The director further pointed out that since his daughter was born in El Salvador on May 31, 1985, the applicant must have traveled to El Salvador nine or ten months prior to his daughter's birth. The director requested that the applicant submit additional evidence of continuous unlawful residence in the U.S. from January 1, 1982 through May 4, 1988, and continuous physical presence in the U.S. from November 6, 1986 through May 4, 1988.

In response to the notice of intent to deny, received by CIS on December 5, 2003, signed by counsel and the applicant, the applicant asserts that he had not revealed at his LIFE interview that he had worked in construction during his last four years of school. The applicant further asserts that his daughter was born almost nine months after his trip to El Salvador.

Interviewer notes signed and sworn to by the applicant on July 21, 2003, indicate that the applicant stated that he came to the United States when he was 20 years old. At no time during the application process has the applicant refuted this statement. The applicant was born August 27, 1964. Therefore, if he entered the U.S. when he was 20 years old, he could not have arrived before August 27, 1984. This would be consistent with the applicant's other statements during his LIFE interview that he attended school for 12 years and that after school he worked about four years as a carpenter. The applicant's statements during his LIFE interview contradict the other documentary evidence submitted by the applicant and raise issues of credibility regarding his claim to having entered into the United States before January 1, 1982, and continuously resided in the United States in an unlawful status since such date and through May 4, 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's statements have raised issues of credibility, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.2(12)(e).

In this instance, the applicant has submitted seven affidavits attesting to his residence and employment in the U.S. during the period in question. He has provided no contemporaneous documentation which could help establish residence from 1981 to 1988. In three of the affidavits submitted by the applicant, the affiants claim to have met the applicant on December 14, 1981, January 3, 1982, and in January 1982. However, none of the affiants states where he met the applicant. Therefore, it cannot necessarily be concluded that they met the applicant in the United States. In two of the three employment affidavits submitted by the applicant the affiants claim to have employed the applicant, but provide no evidence as to where the applicant was employed. Therefore, this employment does not appear verifiable. The third employment affidavit indicates that the applicant was employed in August 1987, and does not relate to most of the 1981-1988 period. The affidavit from [REDACTED] indicates that the applicant asked to borrow money in November 1981, but provides no information as to where this transaction purportedly took place. Nor does the affiant indicate how she knows that the applicant has continuously resided in the U.S.

The affidavits are lacking in detail, and the information in them is at variance with the statement signed by the applicant during his LIFE interview. Thus, affidavits cannot be accorded substantial evidentiary weight and are not sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

Given the absence of any contemporaneous documentation, along with the applicant's statement during his LIFE interview and the insufficient affidavits, it is concluded that he has failed to establish continuous residence in the U.S. for the required period.

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