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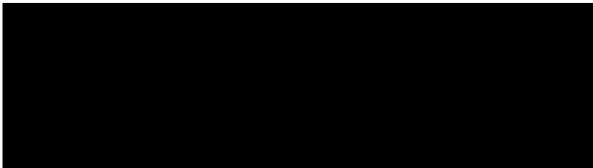
FILE: [Redacted] Office: Los Angeles

Date: JUL 26 2005

IN RE: Applicant: [Redacted]

APPLICATION: 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, Los Angeles, California, and is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because 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 contends that the applicant continuously resided in the United States for the requisite period. Counsel asserts that applicant was not married in Mexico on April 26, 1988, and that a brief and copy of his marriage certificate would be forthcoming to demonstrate that he was not married in Mexico on this date. However, as of the date of this decision, neither counsel nor the applicant has submitted a statement, brief, or evidence to support the appeal. Therefore, the record must be considered complete.

An applicant for permanent resident status under the LIFE Act 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. 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 9, 1995. 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 a single absence from this country when he traveled to Mexico to visit his sick mother from June 10, 1987 to July 10, 1987. In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted two employment letters, photocopies of seventeen postmarked envelopes, and ten photocopied paycheck stubs.

The record shows that the applicant subsequently filed his Form I-485 LIFE Act application on July 12, 2001. On the Form G-325A, Record of Biographic Information, which accompanied his LIFE Act application, the applicant indicated that he married his wife in Mexico on April 26, 1985. The applicant also included a photocopy of his Mexican marriage certificate and a certified English translation of this document as required by 8 C.F.R. § 103.2(b)(3). The certified English translation reflects that the applicant was married in Zacapu, Michoacan, Mexico on April 26, 1985. The fact that the applicant acknowledged that he was absent from the country when he was married in Mexico on April 26, 1985, directly contradicted his prior claim that his single absence from this country occurred when he visited Mexico from June 10, 1987 to July 10, 1987.

The record further shows that the applicant subsequently appeared for the requisite interview relating to his LIFE Act application at the Los Angeles, California District Office on December 30, 2002. The notes of the interviewing officer reflect that the applicant testified under oath that he had only been absent from the United States on a single occasion for no more than a month in 1987, but that he could not recall the exact dates of this absence.

On March 19, 2004, the district director issued a notice of intent to deny to the applicant informing him of the Service's intent to deny his application. Specifically, the district director noted that the applicant had admitted he had been absent from this country when he was married in Mexico on April 26, 1988 on the Form G-325A that was included with his Form I-485 LIFE Act application. The district director indicated that this information directly contradicted the applicant's testimony at his interview on December 30, 2002, as well as the listing of a single absence in 1987 on his Form I-687 application. The district director was correct in noting that the applicant failed to disclose this absence and consistently testified that he was only absent from this country during the requisite period when he visited Mexico from June 10, 1987 to July 10, 1987. The applicant was granted thirty days to respond to the notice.

The record shows that the applicant failed to submit a response to the notice of intent to deny. The district director determined that the applicant seriously impaired his claim of residence in United States during the period in question by failing to disclose that he had been absent from this country when he was married in Mexico on April 26, 1988. Consequently, the district director denied the LIFE Act application on June 1, 2003.

On appeal, counsel indicates that the district director was mistaken in stating that the applicant's marriage occurred in Mexico on April 26, 1988. The AAO notes that while the certified translation indicates that the applicant was married in 1985, the actual marriage certificate does not match the finding on the translation. There is only one date noted on the certificate, and, while it is unclear, it appears to be 1988. It is further noted that the applicant's age is listed as 22 and his wife's as 20. These are the ages that they would have been in 1988 rather than 1985. The applicant has consistently provided contradictory testimony by claiming that he was only absent from this country on one occasion during the requisite period when he visited Mexico from June 10, 1987 to July 10, 1987. This departure does not correspond to either the 1985 or 1988 date of marriage. Neither counsel nor the applicant provides an explanation to reconcile his conflicting testimony relating to his absences from this country in the period from January 1, 1982 to May 4, 1988.

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).

The applicant has seriously impaired the credibility of his claim of residence in the United States for the requisite period by failing to disclose at least one absence from this country and providing conflicting testimony relating to the total number and dates of his absences from the United States. The applicant has failed to establish having resided in continuous unlawful status 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.