

...ing with access to
... clearly unwarranted
... of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2



FILE: [Redacted] Office: Indianapolis Date: JUL 26 2005

IN RE: Applicant: [Redacted]

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, Chicago, Illinois, and is 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 asserts that the applicant has submitted sufficient evidence to demonstrate that he continuously resided in this country for the requisite period.

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. 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 August 19, 1991. The record shows that the applicant subsequently filed his Form I-485 LIFE Act application on July 18, 2001. In support of his claim of continuous residence in this country for the requisite period, the applicant submitted two affidavits of residence signed by [REDACTED] and [REDACTED] respectively. Both affiants attested that the applicant had resided in the United States from January 1982 to 1986.

A review of the record reveals that the applicant has not submitted any evidence to demonstrate that he entered the United States before January 1, 1982 and continuously resided in this country as required by 8 C.F.R. § 245a.11(b). The two affidavits submitted by the applicant in support of his claim of residence attest to his residence in this country from January 1982 to 1986. As such, these two affidavits cannot be considered as sufficient evidence to demonstrate that the applicant resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant asserts has submitted sufficient evidence to demonstrate that he continuously resided in this country for the requisite period. However, the two affidavits contained in the record specifically state that the applicant's period of residence in this country occurred from January 1982 to 1986. Neither counsel nor the applicant offered any explanation as to why no attempt was made to obtain further affidavits from acquaintances, friends, or family to corroborate his claim of residence in the United States for the entire period from prior to 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 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.