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U.S. Citizenship
and Immigration
Services

LA

APR 18 2006



FILE: [Redacted]

Office: Baltimore

Date:

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, Baltimore, Maryland, 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, counsel asserts that the applicant has submitted sufficient evidence to support his claim of continuous residence in this country since prior to January 1, 1982.

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. 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).

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 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 Immigration and Nationality Act (INA) dated May 22, 1990. On the Form I-687 application, the applicant indicated that he first entered and began residing in this country in August 1981. At part #33 of the Form I-687 application where applicants were asked to list all residences on the United States from the date of their first entry, the applicant listed the following addresses as his residences during the requisite period:

- [REDACTED] from August 1981 to March 1986;
- An unspecified address in San Diego, CA from April 1986 to March 1987;
- [REDACTED] from March 1987 to April 1989;
- [REDACTED] from April 1989 to December 1989; and,

- [REDACTED] from January 1990 to May 22, 1990, the date particular Form I-687 application was executed.

The record also contains another separate Form I-687 application that is signed by the applicant and dated November 5, 1990. At part #33 of this Form I-687 application, the applicant listed the following addresses as his residences during the requisite period:

- [REDACTED] from August 1981 to March 1986;
- [REDACTED] from March 1987 to April 1989;
- [REDACTED] from April 1989 to December 1989;
- [REDACTED] from January 1990 to July 1990; and,
- [REDACTED] from August 1990 to November 5, 1990, the date this particular Form I-687 application was executed.

The applicant failed to offer any explanation for the discrepancy in the listing of his residences on the two separate Form I-687 applications.

In an attempt to establish continuous unlawful residence since before January 1, 1982 to May 4, 1988, the applicant furnished an affidavit attesting to his residence in the United States since 1981, an affidavit attesting to his residence in this country since 1983, and an affidavit attesting to a trip he made in 1987. The applicant included the following additional evidence in support of his claim of residence:

- Six original and thirteen photocopied handwritten rent receipts bearing the applicant's name and a variety of dates from September 1, 1981 to February 1, 1987 for "Apt. [REDACTED]" or "No. [REDACTED]" at an unspecified address. The majority of the receipts are signed by Frank Burnett with the remainder signed by [REDACTED]
- A photocopy of receipt from General Electric Supply in Santa Monica, California that is dated February 3, 1982;
- An original receipt from Hartman Catalog Showrooms in Culver City, California that is dated October 27, 1982, which bears the applicant's name and an illegible address;
- An original handwritten receipt that is dated December 20, 1984, lists the applicant address as [REDACTED] and bears the applicant's name. The receipt appears to reflect the applicant's payment of \$10.00 for English as a Second Language or ESL instruction;

- A photocopy of receipt from Electroline in Los Angeles, California that is dated February 20, 1986 and bears the applicant's name;
- An original "Deluxe Form WVC-2 V-6" and two photocopied "Deluxe Form WVC-2 V-6" from [REDACTED] that are dated for November 2, 1987, March 6, 1987 and August 16, 1987, respectively. These documents bear the applicant's name and reflect wages earned by him from this enterprise; and,
- A photocopy of a receipt from [REDACTED] dated April 24, 1988, that bears the applicant's name and lists his address as [REDACTED] Los Angeles, CA 90021.

The rent receipts cited above reflect that the applicant was paying rent for apartment #8 at an unspecified address from September 1981 to February 1987. However, the applicant never specified that he lived in this particular apartment number at any of the addresses he listed as residences for this period on either of the two Form I-687 applications that he submitted. In addition, the volume and continuity of these receipts clearly indicates that the applicant resided in apartment [REDACTED] at a single address from September 1981 to February 1987, rather than the multiple addresses he listed on his two separate Form I-687 applications. While the original handwritten receipt for ESL instruction reflects that the applicant was residing at [REDACTED] as of December 20, 1984, the applicant specified that he did not begin living at this particular address until April 1989 on both of the Form I-687 applications. Moreover, the receipt from Global Telegraph Corporation dated April 24, 1988 attributes an address to the applicant that he himself never listed as a residence on either of his Form I-687 applications. The applicant failed to provide any explanation for these direct contradictions and conflicts regarding his purported addresses of residence in the requisite period.

Subsequently, on November 23, 2002, the applicant filed his Form I-485, Application to Adjust Status to Permanent Residence under the LIFE Act. With his Form I-485 LIFE Act application, the applicant provided photocopies of previously submitted documentation.

In the notice of intent to deny issued on February 26, 2003, the district director questioned the veracity of the applicant's claimed residence in the United States during the requisite period based upon the conflicting testimony contained in the two Form I-687 applications and his supporting documents. The applicant was granted thirty days to respond to the notice.

In response to the notice of intent to deny, counsel submitted a statement in which she asserted that the handwritten rental receipts provided by the applicant reflected payment of rent for apartment [REDACTED] beginning October 1, 1981. Counsel indicated that the applicant also resided at [REDACTED] and [REDACTED] since 1981. Counsel provided copies of previously submitted documents and photocopies of photographs representing buildings located at the addresses that she represented as the applicant's residences. However, counsel's assertion that the applicant began paying rent for an apartment at [REDACTED] in Los Angeles, California beginning in October of 1981 is directly contradicted by the fact that the

applicant specified that he did not begin living at this particular address until April 1989 on both of his Form I-687 applications. Furthermore, as previously noted, the record contains a rent receipt that purports to reflect that the applicant began paying rent for apartment #8 on September 1, 1981, rather than October 1, 1981. 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).

The statements on appeal by counsel regarding the sufficiency of the evidence submitted in support of the applicant's claim of residence 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 documents in support of his claim of residence that contain testimony that directly contradicts and conflicts with testimony and information that he provided on the two Form I-687 applications relating to his addresses of residence in the United States. More importantly, the applicant himself provided conflicting testimony regarding his addresses of residence in this country at part #33 of each of these respective Form I-687 applications. 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 direct contradictions and conflicts in the applicant's own testimony and reliance upon supporting documentation with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States 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.