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U.S. Citizenship  
and Immigration  
Services

Some of the data related to  
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invasion of personal privacy

MAR 02 2005

FILE:

Office: Los Angeles

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, Los Angeles, California, 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 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 any conflicts within the applicant's testimony regarding the date he first entered the United States and began residing in this country are the result of memory loss resulting from a head injury he suffered on November 10, 2001. Counsel contends that the applicant is absolutely sure he entered the United States prior to January 1982, that he subsequently departed the country on three occasions, and that he was never outside the United States for more than one month.

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).

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1), as follows: An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.

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 June 23, 1990. [REDACTED] application where applicants were asked to list all absences from the United States beginning from January 1, 1982, the applicant listed one absence from this country when he traveled to Mexico from December 20, 1987 to January 7, 1988.

A review of the record reveals that the applicant appeared for an interview relating to his application for temporary residence (Form I-687) at the Immigration and Naturalization Service's, or the Service's (now Citizenship and Immigration Services, or CIS) Los Angeles, California Legalization Office on January 27, 1992. During the course of this interview, the applicant testified under oath that he first entered the United States on February 23, 1982. In addition, the applicant provided a statement written in his own hand in his native language of Spanish that reads as follows: "2/23/82 Primer Entada sali diciembre 84 regrese abril 85." The English translation of the applicant's statement is as follows: February 23, 1982 First Entry departed December 1984 returned April 1985.

The record shows that the applicant appeared for another interview relating to his Form I-687 application at the Service's Los Angeles Legalization Office on August 19, 1994. The notes of the interviewing officer reflect that the applicant reiterated under oath that he first entered this country on February 23, 1982. The applicant also provided another statement written in his own hand in his native language of Spanish that reads as follows: "2/23/82 salida diciembre 84 regrese abril 85." The English translation of the applicant's statement is as follows: February 23, 1982 departed December 1984 returned April 1985. While this statement does not specify the significance of what occurred on February 23, 1982, it can be inferred from the applicant's prior statement and testimony that he was referring to the first date he entered this country. In addition, the applicant once again acknowledged that he had been absent from the United States for approximately 120 days from December 1984 to April 1985.

In response to the notice of intent to deny issued on March 12, 2004, the applicant submitted a statement in which he claimed that any conflict within his own testimony regarding the date he first entered the United States and began residing in this country are the result of memory loss resulting from a head injury he suffered on November 10, 2001. The applicant submitted a statement from his doctor and medical records that tend to support the contention that he suffered a head injury on this date and that this injury caused him to suffer from memory and concentration problems, as well as headaches. However, it must be noted that the applicant provided the written statements and testimony described above on January 27, 1992 and August 19, 1994, a significant period of time before he suffered his head injury. Consequently, the fact that the applicant suffers from memory loss as a result of a head injury sustained on November 10, 2001, cannot be considered as having any significance or bearing on statements and testimony he provided prior to suffering such injury.

The district director determined that the applicant had failed to rebut the information contained in the notice and denied the application.

On appeal, counsel reiterates the claim that conflicts within the applicant's testimony regarding the date he first entered the United States and began residing in this country are the result of memory loss resulting from a head injury he suffered on November 10, 2001. Counsel contends that the applicant is absolutely sure he entered the United States prior to January 1982, that he subsequently departed the country on three occasions, and that he was never outside the United States for more than one month. The applicant reiterates his claim to have continuously resided in the United States since prior to January 1, 1982. However, the applicant's current ability to recall dates and events is suspect at best as a result of his documented memory loss. The record shows that when the applicant was interviewed on January 27, 1992 and August 19, 1994, respectively, he provided written statements and sworn testimony indicating that he first entered the United States on February 23, 1982, and that he was absent from this country from December 1984 to April 1985. The applicant's statements and testimony were made well before the date he suffered a head injury on November 10, 2001, and thereafter incurred significant memory loss. As such, written statements and testimony provided

the applicant prior to his head injury must be considered to be more reliable and accurate than testimony provided subsequent to this injury. Therefore, it cannot be concluded that either counsel or the applicant has advanced any compelling reason as to why his prior testimony relating to the date that he first entered the United States and his absence from this country should be disregarded.

Even in cases where the burden of proof is upon the government, such as in deportation proceedings, a previous sworn statement voluntarily made by an alien is admissible, and is not in violation of due process or fair hearing. *Matter of Pang*, 11 I. & N. Dec. 213 (BIA 1965).

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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 acknowledged that he exceeded the 45 day limit for a single absence from this country when departed the United States in December 1984, and then subsequently returned to this country in April 1985. The applicant has also admitted that he first entered the United States on February 23, 1982. 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.