

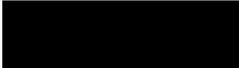


U.S. Citizenship
and Immigration
Services



22

FILE:



Office: HOUSTON

Date:

MAR 03 2005

IN RE:

Applicant:



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:



PUBLIC COPY

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. Any further inquiry must be made to that office.

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 now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director concluded that 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, based on his sworn testimony at the time of his interview. Accordingly, the district director denied the application.

On appeal, counsel asserts that the applicant has previously provided an explanation for the contradictions in his sworn statement. Counsel further asserts that [REDACTED] affidavit dated in 1991 is more accurate than the 2002 affidavit because it was executed much closer to the time of events.

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 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 before January 1, 1982 through May 4, 1988, the applicant furnished the following evidence:

- Notarized affidavits from [REDACTED] and [REDACTED] who indicated that they have known the applicant since December 1982.
- A notarized affidavit from [REDACTED] who indicated that he has known the applicant since December 1981 and attested to the applicant's residence in the United States since that time.
- A notarized affidavit from [REDACTED] who indicated that he has known the applicant since June 1982.
- An affidavit notarized August 2, 1991 from [REDACTED] who attested to the applicant's residence in Houston, Texas from 1981 to the present. [REDACTED] asserted that the applicant has been residing with him since 1986.
- An affidavit notarized October 25, 2002 from [REDACTED] who indicated, "back in October of 1982, my nephew [the applicant] arrived from Mexico to stay with my family at our place of residence... [REDACTED] asserted that the applicant resided with him until July 1999.

- An employment letter from Prince Food Systems, Inc., in Houston, Texas attesting to the applicant's employment from February 8, 1985 through December 5, 1986.
- A notarized affidavit from [REDACTED] who indicated that met the applicant "when he just arrived to the United States in October 1982 and was introduced by his uncle."

At the time of his interview, the applicant was placed under oath and admitted in a sworn statement that he first entered the United States in 1982, and he only resided with his uncle [REDACTED] at [REDACTED]. The applicant further admitted that he returned to Mexico in 1987 and stayed for approximately six months before returning to the United States.

In response to a Notice of Intent to Deny issued on October 21, 2003, the applicant asserted that 1981 was his first entry into the United States and he was nervous at the time of his interview when he stated that his first entered the United States in 1982. The applicant acknowledged his 1987 departure from the United States, but stated that it was for his grandmother's funeral and "my trip lasted a total of one and one half months."

The applicant's amended departure from the United States in 1987 for "one and one half months" contradicts his claim on his Form for Determination of Class Membership that he departed July 5 and returned July 31, 1987 (27 days), and his claim on his Form I-687 application that he departed and returned to the United States during July 1987. Further, the applicant claimed that his purpose for his departure during July 1987 was for business and to visit not for his grandmother's funeral.

In his initial affidavit, [REDACTED] listed [REDACTED] as the applicant's place of residence from January 1982 through October 1984. However, in his subsequent affidavit [REDACTED] indicated that upon the applicant's arrival in October 1982, the applicant resided at his residence, [REDACTED]. As conflicting statements have been provided, it is reasonable to expect an explanation from the affiant in order to resolve the contradictions. However, no statement from the uncle has been submitted to resolve his contradicting affidavits or to corroborate the applicant's amended statement. As such, the uncle's affidavits have little probative value or evidentiary weight.

Except for the affidavit from [REDACTED] none of the affiants have attested to the applicant's presence in the United States prior to 1982.

Doubt cast on any aspect of the evidence 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. See *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Given the credibility issues arising from [REDACTED] affidavits, and the absence of contemporaneous documentation pertaining to this applicant, it is determined that the applicant has not met his burden of proof, and has failed to establish continuous residence in an unlawful states from prior to January 1, 1982 through May 4, 1988, as required. Therefore, the applicant is 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.