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U.S. Citizenship
and Immigration
Services

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LR

FILE:



Office: NEWARK

Date:

MAR 18 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:



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

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, Newark, New Jersey, 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 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 through his former counsel received an extension to submit additional evidence.

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 provided the following evidence throughout the application process:

- A notarized affidavit from [REDACTED] who attested to the applicant's residence in New York since 1981.
- A notarized affidavit from [REDACTED] who attested to the applicant's residence in the United States since November 1981.
- A notarized affidavit from [REDACTED] who attests to the applicant's residence in Stockton, California during November 1983.

Counsel, on appeal, asserts that the applicant was granted an extension until January 30, 2004 to submit additional documentation in support his LIFE application. Counsel, however, does not provide any evidence to support her assertion. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). It must be noted that the record contains a letter dated May 26, 2004 from the applicant's former counsel advising the applicant that his file had been closed, as "you never submitted any additional documentation to Immigration. We sent you several letters, both via regular mail and certified mail, requesting such documentation, however, you never provided us with any additional documents to submit on your behalf."

Mr. Khan provides little or no detail regarding the nature or origin of his relationship with the applicant or the basis for his continuing awareness of the applicant's residence. Mr. [REDACTED] affidavit serves only to establish the applicant's presence during November 1983 in the United States.

The applicant has submitted no contemporaneous documentation to establish residence in the U.S. from the time he claimed to have commenced residing in the U.S. through May 4, 1988. In light of the fact that the applicant claims to have continuously resided in the U.S. since 1981, the inability to produce contemporaneous documentation of residence raises serious questions regarding the credibility of the claim.

Given the absence of any contemporaneous documentation, along with the applicant's reliance on three affidavits, it is concluded that he has failed to establish continuous residence in the U.S. for the required period. 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.