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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: Los Angeles

Date:

MAR 28 2005

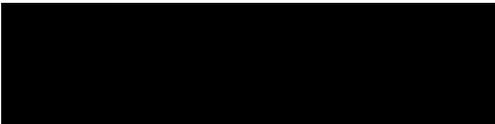
IN RE:

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.

A handwritten signature in black ink, appearing to read "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, Los Angeles, 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 since before January 1, 1982 through May 4, 1988.

On appeal, counsel for the applicant asserts that the district director, in denying the application, failed to take into consideration the evidence submitted by the applicant in support of his claim to continuous residence in the U.S. during the period in question.

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 prior to January 1, 1982, the applicant submits the following:

- A photocopy of an identification card dated August 20, 1981, which is made out to the applicant by the [redacted] Anaheim, California;
- An undated photograph with no other identifying information of a male soccer team on which the applicant was a player;
- A typewritten form letter from [redacted] of the [redacted] Payroll Department, indicating the applicant was employed by that concern as a full-time packer from January 1981 to December 1981, and again from January 1985 to December 1985;
- a handwritten letter from [redacted] of [redacted] who indicates the applicant worked there in 1980;

- A handwritten letter from [REDACTED] acknowledging that the applicant has resided in the U.S. since 1980;
- Two separate handwritten letters from [REDACTED] who identifies himself as the applicant's brother-in-law. In one communication, the writer indicates he has known the applicant since 1980. In the other correspondence, the writer states he has been acquainted with the applicant since 1982. In addition, the writer indicates the applicant has resided with him and his wife for "many years";
- A handwritten communication from [REDACTED] who indicates she has known the applicant since 1981. The correspondent bases her knowledge on the fact that she is the applicant's sister-in-law;
- An employment letter from [REDACTED] who indicates that the applicant worked as a janitor at her factory, Sewing Contractors, from March 23, 1988 to December 28, 1989. Ms. [REDACTED] indicates that her factory is no longer in business;
- A handwritten communication from [REDACTED] who indicates he has known the applicant since 1987;
- A letter from [REDACTED] who indicates he has known the applicant since 1981;
- A letter from [REDACTED], who states that the applicant worked for that firm which, according to the writer, is no longer in business. There is no indication as to exactly when the applicant was employed. The writer further states that he is unable to provide evidence of the applicant's employment as the firm is no longer in possession of employment records from the 1980's;
- An earnings statement dated September 29, 1980 from [REDACTED] which is made out to the applicant; and
- Photocopies of partial Form 1040 U.S. Income Tax returns for 1983 and 1986 completed by family members of the applicant, in which the applicant is designated as a dependent under the category of "exemptions."

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. In this case, the applicant has submitted a minimal amount of contemporaneous documentation to establish his presence in the U.S. from the time he claimed to have commenced residing in the U.S. through May 4, 1988.

The regulations at 8 C.F.R. § 245a.2(d) provide a list of documents that may establish continuous residence and specify that "any other relevant document" may be submitted. However, while the affidavits and third-party employment statements provided by the applicant could possibly be considered as evidence of continuous residence during the period, many of these are deficient or are lacking in basic and necessary information or details. The handwritten communications from [REDACTED] and [REDACTED] indicate

these individuals have been acquainted with the applicant since 1981 and 1987, respectively, but fail to provide any additional information regarding the basis of their knowledge regarding the applicant's residence in the U.S. or the basis for their acquaintanceship with the applicant. As such, these statements far short of containing what such documents should include in order to render them probative for the purpose of establishing an applicant's continuous unlawful residence during the period in question. In addition, of the four (4) affidavits attesting to the applicant's residence in the U.S. since 1980 and 1981, three are from individuals who are members of the applicant's family. Affidavits from those identifying themselves as relatives or close family members of the applicant must be closely scrutinized as such individuals clearly have an obvious interest in the outcome of the proceedings and, as such, cannot be deemed objective or disinterested parties.

Moreover, an examination of the documentation provided by the applicant discloses numerous unexplained inconsistencies and contradictions. The applicant provides two separate pieces of correspondence from El [REDACTED], one a typewritten communication from the firm's payroll department, the other a handwritten note from an individual who fails to indicate her connection to the firm. The first letter references the applicant's employment from January 1981 to December 1981, and from January 1985 to December 1985. The second letter simply mentions the applicant worked there in 1980. The applicant fails to explain or resolve this apparent contradiction as to why the two letters ostensibly from individuals representing the same employer provide different dates of employment for the applicant at the same firm.

The applicant has also submitted two separate handwritten letters from [REDACTED] who identifies himself as the applicant's brother-in-law. In one communication, Mr. [REDACTED] states he has known the applicant since 1980, while in the other correspondence, he asserts has been acquainted with the applicant since 1982. This obvious contradiction further diminishes the credibility of the applicant's residence claim. In addition, Mr. [REDACTED] indicates the applicant has resided with him and his wife for "many years," indicating his place of residence as [REDACTED]. However, at item 33 on the applicant's I-687 application, where the applicant has endeavored to enumerate all of his residences from November 1980 through September 1993, this address provided by Mr. [REDACTED] has not been included.

On the I-687 application, the applicant indicates having worked at [REDACTED] from January 1981 to December 1981, and from January 1985 to December 1985. The applicant's claim to have worked during these time-periods is supported by the aforementioned employment letter from [REDACTED]. However, there is no indication on the I-687 application or elsewhere in the record of any employment on the applicant's part during the period from December 1981 to January 1985. While the applicant's inability to account for a significant three-year gap in employment does not necessarily refute his claim to continuous residence, a negative inference does tend to arise regarding that residence claim.

Given the numerous unresolved inconsistencies and contradictions present in the applicant's documentation, the applicant's reliance on affidavits and third-party statements which do not meet basic standards of probative value, and the minimal amount of contemporaneous documentation provided by the applicant, it is concluded that he has failed to establish continuous residence in an unlawful status 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.