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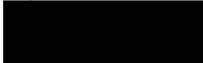
U.S. Citizenship
and Immigration
Services

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FILE:



Office: Milwaukee

Date:

JAN 09 2006

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, Chicago, Illinois, and is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not established 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 the applicant has submitted sufficient evidence to demonstrate that he continuously resided in this country for the requisite period to the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services or CIS). Counsel contends that the district director failed to specify any deficiencies in the evidence submitted by the applicant in denying the application.

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 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 May 18, 1990. At part [REDACTED] 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 [REDACTED] in New York, New York from April 1981 to November 1988 and [REDACTED] in New York, New York from April 1989 through the date the application was submitted on May 18, 1990.

In support off his claim of continuous residence in this country since prior to January 1, 1982, the applicant included an affidavit that contained the letterhead for the Hotel Mansfield Hall at [REDACTED] Street in New York, New York and signed by [REDACTED]. Mr. [REDACTED] indicated that his position at the hotel was that of clerk and stated that the applicant lived at the hotel with a friend who shared the rent from April 1981 to November 1988.

The applicant also submitted a letter that contained the letterhead for [REDACTED] in New York, New York, and is signed by [REDACTED] b. Mr. [REDACTED] indicated that the applicant had been a member of this mosque and regular attendee of prayer services since August 1981.

However, Mr. [REDACTED] failed to provide any specific detailed information relating to the applicant's residence such as the locations where he resided or the periods he resided at each locale in this country during the period in question. As such, this affidavit cannot be considered as sufficient evidence to demonstrate that the applicant resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988.

The applicant subsequently filed his Form I-485 LIFE Act application on December 24, 2001. The record shows that the applicant failed to submit any additional evidence in support of his claim of residence in the United States for the requisite period.

On May 1, 2003, the district director issued a notice of intent to deny to the applicant informing him of the Service's intent to deny his LIFE Act application because he failed to submit sufficient credible evidence of continuous unlawful residence in the United States for the period in question. The applicant was granted thirty days to respond to the notice and provide additional evidence in support of his claim of residence in the requisite period.

In response, the applicant submitted an affidavit signed by [REDACTED]. Mr. [REDACTED] stated that he and the applicant resided together as roommates at [REDACTED] Street in New York, New York from 1982 to 1985. However, Mr. [REDACTED] testimony that the applicant lived at this address from 1982 to 1985 directly contradicted the applicant's testimony at part #33 of the Form I-687 application that he resided at that address beginning in April 1989. Mr. [REDACTED] testimony also conflicted with the testimony contained in the affidavit signed by [REDACTED] who declared that applicant lived at [REDACTED] Street in New York, New York from April 1981 to November 1988.

The applicant also submitted an affidavit signed by [REDACTED] who stated that he could attest to the applicant's presence in the United States in 1987 and 1988 because the applicant visited his home often during this period. However, Mr. [REDACTED] testimony failed to provide any relevant and detailed information relating to the applicant's residence in this country such as the specific address or addresses where he may have resided in 1987 and 1988. Further, Mr. [REDACTED] did not attest to the applicant's residence in the United States in that period from January 1, 1982 to 1986. Consequently, this affidavit must be considered to be of limited probative value.

The district director determined that the applicant had failed to establish his claim of residence for the requisite period and denied the application on June 25, 2003.

Counsel's statements regarding the sufficiency of the applicant's evidence and failure of the district director to specify any deficiencies in such evidence are acknowledged and have been considered. Nevertheless, the fact remains that the applicant has provided a supporting document, the affidavit signed by Thierno Diaw, that directly contradicts his own testimony, as well as the testimony contained in the affidavit signed by John White. Such a contradiction seriously diminishes the credibility of the applicant's claim of residence in this country for the period from prior to January 1, 1982 to May 4, 1988, in addition to diminishing the credibility of any documents provided in support of that claim. The remaining supporting documentation submitted by the applicant lacks sufficient detail and specific information relating to the applicant's residence in this country for the requisite period. Neither counsel nor the applicant offered any explanation as to why the applicant did not obtain further affidavits and letters from acquaintances, friends, or family to corroborate his claim of residence in the United States for the period in question.

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 outright and direct contradictions in the testimony regarding the applicant's residence in this country for the requisite period and his 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 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.