

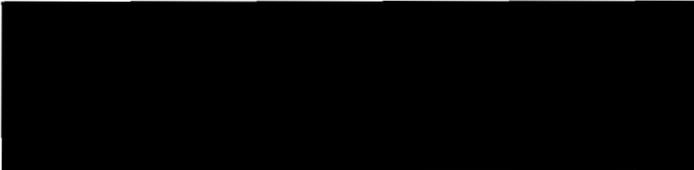
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: Los Angeles, CA

Date: MAR 03 2006

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. 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 in Los Angeles, CA and it is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The district director concluded 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. In her decision the district director stated that in a previous adjustment of status application filed by the applicant he stated in two different sections that he continuously resided in the United States since December 20, 1988.

On appeal, the applicant states that he is submitting additional evidence to establish his continuous residence in the United States during the requisite periods of time.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988. The pertinent statutory provisions read as follows:

Section 1104(c)(2)(B) – Continuous Unlawful Residence

- (i) In general – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act that were most recently in effect before the date of the enactment of this Act shall apply.
- (ii) Nonimmigrants – In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, the alien must establish that the alien's period of authorized stay as a nonimmigrant expired before such date through the passage of time or the alien's unlawful status was known to the Government as of such date.

Section 1104(c)(2)(C) – Continuous Physical Presence

- (i) In general – The alien must establish that the alien was continuously physically present in the United States during the period beginning on November 6, 1986, and ending on May 4, 1988, except that -
 - (I) an alien shall not be considered to have failed to maintain continuous physical presence in the United States for purposes of this subparagraph by virtue of brief, casual, and innocent absences from the United States; and
 - (II) brief, casual, and innocent absences from the United States shall not be limited to absences with advance parole.

A review of the record indicates that the applicant gave a written statement contradicting his claims of continuous residence in the United States during the requisite periods of time. The applicant stated on his first adjustment of status application, filed on August 11, 1999 that he continuously resided in the United States since December 20, 1988. The applicant then stated on his class membership application that he first entered the United States in 1981.

A review of the applicant's criminal record indicates that he was in the United States on January 1, 1979 when he was arrested for a misdemeanor (drunk driving on the highway). Although the applicant was clearly in the United States before January 1, 1982 it is not clear that he continuously resided in the United States for the requisite time periods. Furthermore, the applicant's contradicting claims concerning his first entry into the United States seriously call into question his credibility.

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. 8 C.F.R. § 245a.12(e). When something is to be established by a preponderance of evidence it is sufficient that the proof only establish that it is *probably* true. See *Matter of E-- M--*, 20 I&N Dec. 77 (Comm. 1989). Preponderance of the evidence has also been defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979).

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).

In an attempt to overcome his previous contradicting statements and to establish continuous unlawful residence since before January 1, 1982 through May 4, 1998 the applicant submitted:

- A statement from the applicant stating that the information on his August 1999 adjustment application was incorrect and that he entered the United States in 1981. He states that he did not read or understand English when he signed the application and did not know what was stated on the application.
- Copies of pay stubs from October and November 1987.
- A photo of the applicant standing in front of a white wall, which he claims was taken in Santa Ana, CA in February 1979.
- A copy of a receipt from 1983 with no name identifying who the receipt belongs to.
- An immunization record for the applicant's daughter, showing vaccinations were done in California starting in 1988.
- A 1988 California Tax Form.
- An affidavit from [REDACTED] stating that he has known the applicant as a good friend and has personal knowledge of his residence in the United States from October 1979 to the present.
- An affidavit from [REDACTED] stating that he has known the applicant as a good friend and has personal knowledge of his residence in the United States from January 1981 to the present.
- An affidavit from [REDACTED] stating that she has known the applicant as a good friend and has personal knowledge of his residence in the United States from September 1981 to the present.
- An affidavit from [REDACTED] stating that she has known the applicant as a good friend and has personal knowledge of his residence in the United States from March 1981 to the present.
- An affidavit from [REDACTED] stating that he has known the applicant as a good friend and has personal knowledge of his residence in the United States from March 1981 to the present.

- An affidavit from [REDACTED] stating that he has known the applicant as a good friend and has personal knowledge of his residence in the United States from March 1982 to the present.
- An affidavit from [REDACTED] stating that he has known the applicant as a good friend and has personal knowledge of his residence in the United States from June 1981 to the present.
- An affidavit from [REDACTED] stating that she has known the applicant as a good friend and has personal knowledge of his residence in the United States from March 1981 to the present.
- An affidavit from [REDACTED] stating that he has known the applicant as a good friend and has personal knowledge of his residence in the United States from June 1980 to the present.
- An affidavit from [REDACTED] stating that he has known the applicant as a good friend and has personal knowledge of his residence in the United States from September 1980 to the present.
- An affidavit from [REDACTED] stating that he has known the applicant as a good friend and has personal knowledge of his residence in the United States from September 1980 to the present.
- Copies of the applicant's government identification for the years 1995, 1996, and 1999.

The applicant's lack of understanding the English language does not overcome the fact that he signed a statement stating that he continuously resided in the United States since December 20, 1988. The adjustment application, where the sworn statements were made, states that by signing the document the applicant certifies under penalty of perjury that all the information in the application is true and correct. If the applicant did not understand the document he was signing then it was his responsibility to have the document translated to him.

The previous statements made by the applicant weaken the credibility of the affidavits submitted in support of his application. All the affidavits are identical with the only difference being the date of first meeting the applicant. The affidavits also lack detailed information about the person's relationship to the applicant.

Therefore, the applicant has not established by a preponderance of the evidence, that he satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, having continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988 as required for eligibility for legalization under section 1104(c)(2) of the LIFE Act.

Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.