



U.S. Citizenship
and Immigration
Services

L2

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



FILE:

Office: CHICAGO

Date: MAR 08 2006

IN RE:

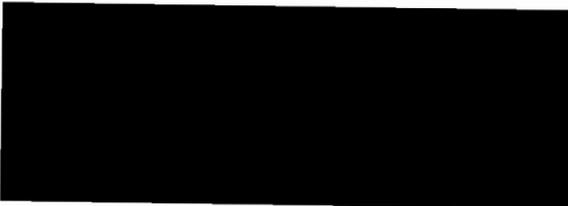
Applicant:



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:



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, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) 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 asserted the evidence submitted by the applicant was not accorded proper weight and should be deemed sufficient to establish presence during the requisite period. Counsel submitted an additional copy of Mr. [REDACTED] affidavit along with a receipt dated December 10, 1982 from International Export House in Chicago, Illinois. Counsel requested 60 days in which to submit a brief and/or evidence. However, 21 months later, no additional correspondence has been presented by counsel.

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:

- An affidavit from [REDACTED] of Chicago, Illinois who indicated that the applicant was a family friend and he had known the applicant since 1982.
- An affidavit from [REDACTED] of Chicago, Illinois who attested to the applicant's residence in the United States since 1984. Mr. [REDACTED] based his knowledge on having regular visits with the applicant.

The director determined that the documentation submitted was insufficient to establish continuous residence in the United States since before January 1, 1982 through May 4, 1988. The director issued a Notice of Intent to Deny, which provided the applicant the opportunity to submit additional evidence to establish his continuous residence in the United States during the requisite period. The applicant, however, failed to respond to the notice.

The applicant has not submitted any evidence to establish entry into the United prior to January 1, 1982. The receipt only serves to establish the applicant's presence in the United States on December 10, 1982, it does not imply or affirm continuous residence. The AAO does not view the two affidavits discussed above as

substantive enough to support a finding that the applicant continuously resided in the United States during the requisite period.

The applicant claimed that he has been in the United States since 1981, but only provides affidavits from two acquaintances who merely attested to his character and friendship. The acquaintances did not provide an address for the applicant. The applicant has not provided any documentation to indicate where he was employed or resided during the period in question. The inability to produce contemporaneous documentation of residence raises questions regarding the credibility of the claim.

Given the absence of any contemporaneous documentation, along with the applicant's reliance on two affidavits, it is concluded that he has failed to establish continuous residence in the United States for the requisite period.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the district office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1), as follows: An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.

It is noted for the record that the applicant submitted two affidavits notarized in 1990 from [REDACTED] who attested to the applicant's departures from the United States in April 1987 to May 1987 and in November 1987 to December 1987

The record reflects that on the Form G-325A, Record of Biographic Information, which accompanied his LIFE application, the applicant indicated that he married his wife in India on June 14, 1987. The fact that the applicant acknowledged that he was absent from the country when he was married in India on June 14, 1987, directly contradicted his prior claim that his single absence from this country occurred when he visited India from July 5, 1987 through August 7, 1987.

This fact, coupled with the applicant's failure to disclose his June 1987 departure, are a strong indication that the applicant was outside the United States beyond the period of time allowed by regulation.

Without proof to the contrary, it is concluded that the applicant was in India prior to June 14, 1987 and did not re-enter the United States until August 7, 1987, which exceeded the 45-day period allowable for a single absence. There is no evidence to indicate that an emergent reason delayed the applicant's return to the United States within the 45-day period.

The applicant has, therefore, failed to establish that he resided in *continuous* unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. 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.