

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

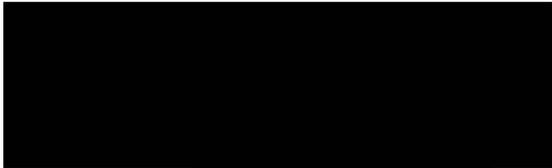
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2

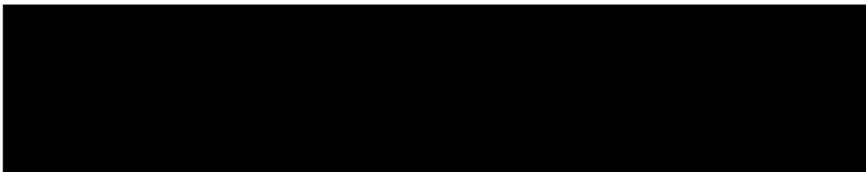


FILE: [REDACTED] Office: CHICAGO Date: FEB 28 2008
MSC 02 120 64241

IN RE: Applicant: [REDACTED]

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. If your appeal was sustained, or if your case 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, Chief
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, 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. Specifically, the director noted that because the applicant entered the United States under a valid B-2 visitor visa and subsequently entered a second time under a valid F-1 student visa, he was lawfully present in the United States for a least a portion of the relevant period.

On appeal, counsel contends that the applicant's brief absence and subsequent re-entry as a student should not be deemed interruptive of his continuous unlawful residence in the United States during the requisite period. Specifically, counsel relies on the regulation at 8 C.F.R. § 245a.1(c)(1)(i), which defines the term "resided continuously" as:

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 through the date the application for temporary resident status is filed, 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.

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).

Although Citizenship and Immigration Services (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, the applicant submitted an affidavit dated October 29, 2001 from [REDACTED] cousin of the applicant, who claimed that the applicant first entered the United States in October 1980, and that he resided with him in Silver Spring, Maryland for approximately three months. On his affidavit for class membership, signed under penalty of perjury on October 1, 1990, the applicant indicated that he first entered the United States with a B-2 visa on October 11, 1980. Counsel for the applicant claims in the record that he entered the country with his mother and was included in her passport as a minor. He claimed that he overstayed on that visa, and departed the country in October 1982 for approximately two weeks. He then subsequently returned to the United States on October 31, 1982 with an F-1 student visa.

The director found that his legal entry to the United States on October 31, 1982 rendered him ineligible for the benefit sought, and issued a notice of intent to deny (NOID) the application on September 17, 2003. In the NOID, the director noted that his legal entry into the United States in October 1982 as a student terminated his unlawful status, since it meant that for at least a portion of the period between January 1, 1982 through May 4, 1988, he was present in the country in a *lawful* status. The applicant was afforded the opportunity to rebut this conclusion and submit any additional evidence in support of the application.

In rebuttal, counsel for the applicant claimed that since the applicant only departed the United States for two weeks in October 1982, his absence was merely "brief, casual and innocent." He concludes that since this absence did not exceed forty-five days, it was thus not disruptive of the applicant's continuous residence in an unlawful status.

The director disagreed with counsel's assertions, and denied the application on February 28, 2005. The director restated the basis for the denial which he had set forth in the NOID, and concluded that the applicant's lawful re-entry terminated his continuous unlawful residence in the United States. Counsel again asserts on appeal that the applicant's trip abroad in 1982 was brief, innocent and casual, and thus was not disruptive of his continuous residence in the United States. The AAO disagrees with both the director and counsel.

The first issue to address is whether the applicant in fact entered the United States in October 1980. The applicant claims that he first entered the United States on October 11, 1980, and was included on his mother's passport as a minor. In support of this contention, a copy of his mother's passport is submitted. The photocopy of the passport is dark and at times illegible, but it appears that she was granted a B-2 visa from July 7, 1977 to July 7, 1981. Another stamp indicates the issuance of another visa from January 1979 to April 1979, but the specifics are illegible. One page lists the names of her three minor children, including the applicant, along with two photographs of children. However, these documents fail to establish that the applicant himself entered the United States as claimed on October 11, 1980. Other than the applicant's claim on the affidavit for class membership and the affidavit of the applicant's cousin, [REDACTED], who claimed that the applicant first entered the United States in October 1980 and resided with him for three months, there is no other documentation to specifically demonstrate the applicant's entry prior to January 1, 1982. While the AAO concurs with the finding that, if the applicant credibly demonstrated his entry as claimed in October 1980, his continued presence in the United States after the expiration of his B-2 status (if such status expired prior to January 1, 1982) would have established his unlawful presence in the United States as required, the minimal documentary evidence of his alleged entry in 1980 renders it impossible to conclude that he was in fact present during the requisite period.

The inability to establish the applicant's unlawful presence in the United States since before 1982 renders analysis of the 1982 departure and re-entry moot. However, the AAO will address this issue briefly for the applicant's benefit. Generally, an absence of two weeks would be considered a brief and casual absence, and not interruptive of an applicant's continuous unlawful residency as contended by counsel. Likewise, as maintained by the director, entry to the United States with a valid F-1 student visa would generally be deemed a legal entry, and would generally oppose a finding that an applicant continued to reside in an unlawful status. In this matter, however, it appears that the applicant fraudulently procured an F-1 student visa in October 1982 to gain re-entry to the United States with the intent to immediately resume his unlawful residence. The applicant, therefore, would be deemed to have been residing in an unlawful status as a result of this action. However, section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Based on the record of proceeding, there is no evidence that the applicant attended school in the United States. The fact that the applicant procured a student visa in a fraudulent manner and made material misrepresentations in an attempt to establish his residence within the United States for the requisite period render him inadmissible to this country pursuant to section 212(a)(6)(C) of the Act. By filing the instant application and relying on fraudulently obtained documentation, the applicant has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact. While the applicant did in fact file Form I-690, Application for Waiver of Grounds of Excludability, on October 1, 1990, he did not claim inadmissibility under section 212(a)(6). Therefore, even if this issue were relevant to the instant appeal, the applicant would still be inadmissible to the United States as required by 8 C.F.R. § 245a.2(d)(5). Consequently, the applicant would be ineligible to adjust to temporary residence under section 245A of the Act on this basis as well.

Finally, it is noted for the record that the applicant appears to have two social security numbers: [REDACTED] and [REDACTED]. The applicant submits a copy of his social security statement under number [REDACTED] for the years 1984 to 2002. It is noted that his income for 1986 is listed as \$0. The record also contains the applicant's Form 1040A, U.S. Individual Income Tax Return, for 1986, which indicates his annual taxable income for that year was \$12,832. It is further noted that the social security number listed is [REDACTED] yet no income for 1986 is reported on the social security statement. In addition, the applicant submits a copy of his Form W-2, Wage and Tax Statement, for 1985 from Sir Speedy Printing Center, showing annual wages earned in the amount of \$31,132. This Form W-2 is issued to the applicant under social security number [REDACTED] and this substantial amount of income is not included on the social security statement provided for the record.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). These serious inconsistencies raise questions regarding the validity of the applicant and cast doubt on the credibility and veracity of the applicant's claims, particularly the unsubstantiated claim that he entered the United States in October of 1980.

Accordingly, the AAO hereby withdraws the director's decision and enters its own decision denying the application based on the finding that the applicant failed to demonstrate that he continuously resided in the United States in an unlawful status since before January 1, 1982.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.