

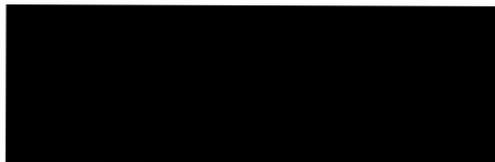
PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



FILE:

MSC 02 092 62932

Office: Houston

Date:

MAY 04 2008

L2

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. 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, 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, Houston, Texas, 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, the applicant acknowledges that he did not enter the United States before January 1, 1982, but instead began residing in this country in 1986. The applicant asserts that he did submit a written claim to class membership and should be allowed to apply for adjustment to permanent residence under the settlements reached in *CSS v. Ridge*, Case Nos. Civ. S-98-629-LLK and S-86-1343-LKK IV and *Newman v CIS*, Civ. No. 87-4757-WDK (CWX). The applicant includes copies of previously submitted documentation in support of the appeal.

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. See § 1104(c)(2)(B) of the LIFE Act and 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 evidence, the proof submitted by the applicant has to establish only that the assertion or asserted claim 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. See 8 C.F.R. § 245a.2(d)(3)(vi)(L).

At issue in this proceeding is whether the applicant established 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. 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 (Act) on January 7, 1991. At part #16 of the Form I-687 application where applicants were asked to list the date of their last entry, the applicant listed 1981. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry, the applicant listed [REDACTED] in Conroe, Texas as his residence from 1982 to 1986, and [REDACTED] in Conroe, Texas

from 1989 to November 28, 1990, the date the Form I-687 application was executed. The applicant provided no explanation as to why he failed to list any address of residence for either the period he first entered the United States in 1981 and the date he began residing at the [REDACTED] in Conroe, Texas in 1982, or that period when he terminated his residence on [REDACTED] in Conroe, Texas in 1986 and the date he began residing at the address on [REDACTED] in Conroe, Texas in 1989. In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant provided five affidavits of residence.

The record shows that the applicant appeared for an interview relating to his Form I-687 legalization application at the Service's Legalization in Houston, Texas on January 7, 1991. The notes of the interviewing officer reflect that during the course of this interview, the applicant testified under oath that his initial entry into the United States occurred approximately six years ago. The applicant's admission that he entered this country well after January 1, 1982, approximately six years prior to the date of his interview on January 7, 1991, seriously impairs the credibility of his claim that he resided in this country prior to January 1, 1982 to May 4, 1988, as well as the credibility of any and all documents submitted in support of that claim.

The record shows that the applicant filed his Form I-485 LIFE Act application with Service on December 31, 2001. With the Form I-485 Life Act application, the applicant failed to submit any new evidence in support of his claim of continuous residence in this country for the requisite period. The applicant did include a Form G-325A, Record of Biographic Information, with the filing of his Form I-485 LIFE Act application. At that portion of the G-325A where applicants were asked to list their last address outside of the United States of more than one year, the applicant specifically acknowledged that he resided in Cuernavaca, Mexico from his date of birth in January 1971 through 1986.

The applicant subsequently appeared for the requisite interview relating to his LIFE Act application at the Houston, Texas District Office on January 26, 2004. The notes of the interviewing officer reflect that during the course of this interview, the applicant testified under oath that he first entered the United States when he was fifteen years old by crossing the border with friends and entering without inspection near Laredo, Texas on June 26, 1986. The applicant further testified that the 1981 date he listed on the Form I-687 application as his first date of entry into this country was incorrect. The record shows that applicant attested to the content and accuracy of his testimony during the interview by signing the interviewing officer's notes.

On March 12, 2004, the district director issued a notice of intent to deny to the applicant informing him of CIS' intent to deny his Form LIFE Act application because of the fact that he admitted under oath that he entered the United States for the first time on June 26, 1986 at his interview on January 26, 2004. 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.

Both in response to the notice of intent to deny and on appeal, the applicant acknowledges that he did not enter the United States before January 1, 1982, but instead began residing in this country in 1986. The applicant asserts that he did submit a written claim to class membership and should be allowed to apply for adjustment to permanent residence under the settlements reached in *CSS v. Ridge*, Case Nos. Civ. S-98-629-LLK and S-86-1343-LKK IV and *Newman v CIS*, Civ. No. 87-4757-WDK (CWX). However, the question of whether the applicant had submitted a claim to class membership in any of the requisite legalization class-action lawsuits is not at issue in these current proceedings. The settlements referenced by the applicant and the corresponding program for the submission of legalization applications for temporary resident status under these settlements is separate and distinct from the statutes, regulations, requirements, and procedures for applying for permanent resident status under the provisions of the LIFE Act. Section 1104(b) of the LIFE Act specifically requires that an applicant must have made a written claim to class membership in one of the legalization lawsuits cited above prior to October 1, 2000 and the record clearly demonstrates that the applicant in this case submitted a claim to class membership when filed his Form I-687 legalization application on January 7, 1991. The provisions of the settlement agreements cited by the applicant contain no requirement that an alien make a written claim to class membership by October 1, 2000, instead an alien simultaneously submits a Form I-687 legalization application for temporary status under section 245A of the Act and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, prior to the termination of the application period on December 31, 2005. An alien submitting a Form I-687 legalization application for temporary status under section 245A of the Act pursuant to these settlement agreements must establish that he or she resided in the United States from prior to January 1, 1982 to May 4, 1988. *See* section 245A(a)(2) of the Act and 8 C.F.R. § 245a.2(b). Therefore, the fact that the applicant acknowledges that he did not begin residing in the United States until 1986 would also render him ineligible to adjust to temporary residence under those settlement agreements cited above.

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 applicant's repeated admissions that he first entered this country in 1986, 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 on this basis.

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