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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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FILE:



Office: Los Angeles

Date:

APR 05 2005

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:

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, 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, Los Angeles, California, 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 asserts that any discrepancy in information contained in affidavits he submitted in support of his claim of residence was the result of a single mistake made by one of the affiants in listing the applicant's places of residence. The applicant contends that he had no knowledge that the individual who had prepared a separate political asylum application on his behalf had indicated that he was a Guatemalan national who first entered the United States in 1993. The applicant includes copies of previously submitted documentation.

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. *See* 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 or about January 4, 1991. On the Form I-687 application, the applicant indicated that he first entered this country by crossing the border in October of 1981 at San Ysidro, California without being inspected by an officer of the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS). As evidence of his identity, the applicant included a photocopy of a Mexican birth certificate that was issued on August 28, 1989, and is accompanied by a certified English translation. The birth certificate lists the applicant's name as [REDACTED], the name of his mother as [REDACTED], her nationality as Mexican, and her age as fifty-eight. The name of the applicant's father is listed as [REDACTED] with no age provided. This document also lists [REDACTED] and [REDACTED] witnesses to the registration of the applicant's birth in the civil register.

The record shows that the applicant subsequently submitted a Form I-485 LIFE Act application on June 19, 2001. As evidence of his identity, the applicant included a photocopy of a Mexican birth certificate that was issued on July 20, 2000, and is accompanied by a certified English translation. This birth certificate lists the applicant's name as [REDACTED], the name of his mother as [REDACTED], her age as thirty-four. The name of the applicant's father is listed as [REDACTED] and his age as thirty-six. This document also lists [REDACTED] as witnesses to the registration of the applicant's birth in the civil register. Clearly, the birth certificate that was included with the Form I-485 LIFE Act application lists significantly different information relating to the applicant's mother, father, and witnesses than that contained in the birth certificate that was submitted with the Form I-687 application. No explanation was provided by the applicant for the conflicting information contained in the two Mexican birth certificates he has submitted to establish his identity.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted five affidavits of residence, two employment letters, three original receipts, three photocopied receipts, and two photocopied checks.

A review of the electronic record revealed that the applicant possessed a separate Administrative file or A-file, [REDACTED] which contained a Form I-589 Application for Asylum and Withholding of Removal, that was submitted to the Service by the applicant on March 11, 1994. That A-file has now been consolidated into the current record of proceedings. On the Form I-589 political asylum application, the applicant listed his nationality as Guatemalan and his place of birth as Retalhulea, Guatemala, and indicated that he departed Guatemala on September 1, 1993. The applicant indicated that he traveled through Mexico and arrived in the United States for the first time by crossing the border on September 28, 1993 at San Ysidro, California without being inspected by a Service officer. The applicant also specifically testified that he had been a student at the University of San Carlos in Guatemala who had been harassed, mistreated, and brutalized by the Guatemalan military because of his membership in the Association of University Students. The Form I-589 political asylum application contains no indication that it was prepared by anyone other than the applicant.

With the Form I-589 political asylum application, the applicant included a Form G-325A, Biographic Information, in which he indicated that he resided at [REDACTED] from January 1975 to September 1993. The applicant's listing of an address in Guatemala as his residence from January 1975 to September 1993 on the Form G-325A completely contradicts his claim to have resided in the United States in the requisite period. The Form G-325A contains no indication that it was prepared by anyone other than the applicant.

As evidence of his identity, the applicant provided a photocopy of a Guatemalan birth certificate that was issued on October 12, 1990, and is accompanied by a certified English translation. This birth certificate lists the applicant's name as [REDACTED] and the name of his mother as [REDACTED] but does not provide any information relating to his father. The fact that the applicant has submitted three different birth certificates from two countries that contain contradictory information relating to such essential elements as his nationality, his name, the name and age of his parents, names of witnesses, and place of birth seriously undermines the credibility of the applicant's claim of identity.

The record shows that the applicant subsequently appeared for the requisite interview relating to his LIFE Act application at the Service's Los Angeles District Office on November 6, 2001. During the course of this interview, the applicant was questioned regarding the existence of the separate political asylum application. The applicant acknowledged that he had signed the political asylum application that listed his nationality as Guatemalan, but stated that he did not know about the Guatemalan birth certificate. The applicant also provided a signed sworn statement in which he indicated that the individual who had prepared the political asylum application had not informed him that his nationality would be listed as Guatemalan. However, as noted above the political asylum application and the accompanying Form G-325A provide no indication that these documents were prepared by anyone other than the applicant. Additionally, the applicant's assertion cannot be considered as adequate to explain the discrepancies in the two Mexican birth certificates contained in the record that he has submitted as proof of identity in separate and proceedings that are unrelated to his prior request for political asylum.

The district director subsequently issued a notice of intent to deny to the applicant on March 20, 2004, in which the veracity of his claim of continuous residence in this country from prior to January 1, 1982 was questioned. While the district director took issue with two affidavits the applicant had submitted in support of his claim of residence in this country from prior to January 1, 1982 to May 4, 1988, any purported discrepancy contained within such affidavits is minimal in the current proceedings and not the focus of an examination of this particular applicant's claim of residence for the requisite period. Nevertheless, the district director also noted that the applicant had submitted a separate political asylum application in which he claimed that he was a Guatemalan national who had not entered the United States until 1993. The applicant was granted thirty days to respond to the notice.

The record shows that the applicant failed to submit any response to the notice of intent to deny. The district director concluded that 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 and, therefore, denied the LIFE Act application on May 14, 2004.

On appeal, the applicant reiterates that his claim that he was unaware that the individual who had prepared his political asylum application indicated that he was a Guatemalan national who had resided in that country up until 1993. However, the record shows that the applicant signed the Form I-589 political asylum application and specifically acknowledged under penalty of perjury that all information contained within this application and accompanying documents was true to the best of his knowledge. In addition, on January 24, 1995 the applicant appeared for an interview at the Los Angeles Asylum Office regarding his asylum claim. During the interview he was questioned about the contents of the asylum application. On that date he again signed the Form I-589, confirming its contents. Further, the record contains notes taken by an asylum officer at the time of the interview in which the applicant reasserted his claim of being mistreated by the Guatemalan military. Therefore, the applicant's statements cannot be considered as sufficient to overcome the conflicting and contradictory information that he himself has provided regarding his place of residence during the requisite period, as well as his own nationality and identity. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm. 1972).

Pursuant to 8 C.F.R. § 245a.12(e), the burden remains with the applicant 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. In this current matter, the record contains documents that tend to contradict and conflict with the applicant's claim of residence, his nationality, and his identity. These factors raise serious questions regarding the authenticity and credibility of the applicant's claim of residence in this country, as well as any documents submitted to support this claim. Given these circumstances, it is concluded that documents provided by the applicant are of questionable probative value. 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 lack of contemporaneous documentation pertaining to this applicant, direct contradictions and conflicts in testimony, and 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.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center [or other 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).

An applicant for permanent resident status under the LIFE Act must submit with their application, "[E]vidence to establish identity, such as a passport, birth certificate, any national identity document from the alien's country of origin bearing photo and fingerprint, driver's license or similar document if issued by a state if it contains a photo, or baptismal record/marriage certificate." 8 C.F.R. § 245a.12(d)(3).

The applicant has submitted three different birth certificates from two countries that contain contradictory information relating to such essential elements as his nationality, his name, the name and age of his parents, names of witnesses, and place of birth. The applicant has failed to submit sufficient credible documentation to establish his identity as required by 8 C.F.R. § 245a.12(d)(3). Accordingly, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act on this basis as well.

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