

Identifying data deleted to
prevent invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



FEB 08 2005

FILE:



Office: Los Angeles

Date:

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 District Director, Los Angeles, 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 from before January 1, 1982 through May 4, 1988.

On appeal, the applicant attempts to resolve the questions raised in the notice of intent regarding exactly when he completed his five years of schooling in Mexico and when he first entered the United States.

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. 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 establish continuous unlawful residence since before January 1, 1982, as claimed, the applicant furnished the following evidence:

- An affidavit from [REDACTED] who attests to the applicant having departed the U.S. for Mexico on February 14, 1988 and having returned March 17, 1988;
- An affidavit from [REDACTED] Manager of Starlight Originals, Inc., who attests to the applicant having worked at his firm in a production capacity since July 1990. The affiant also states that, based on his personal knowledge, the applicant has resided in the U.S. since November 1981;
- An affidavit from [REDACTED] the applicant's mother, who attests to his having resided in the U.S. since November 1981; and
- An affidavit from [REDACTED] who indicates the applicant is her nephew and attests to the applicant having resided in the U.S. since November 1981.

The regulations at 8 C.F.R. § 245a.2(d) provide a list of documents that may establish continuous residence and specify that "any other relevant document" may be submitted. However, while the affidavits and third-party statements provided by the applicant could possibly be considered as evidence of continuous residence during the period under discussion, questions were raised by the district director with regard to discrepancies in the applicant's documentation which impact on the overall credibility of his claim. In the Notice of Intent to Deny, the district director noted that, throughout his documentation, the applicant claimed to have resided in the U.S. since 1981. However, according to the notes of the interviewing officer at the applicant's adjustment interview, he stated under oath that he had continued his education in Mexico through the 5th grade, after which he entered the U.S. in 1983. As such, his claim to have entered the U.S. in 1981 is at variance with his interview statement.

In response to the notice of intent, the applicant provided a rebuttal statement in which he asserted that the district director's conclusion was based on a misunderstanding at the time of his interview. The applicant asserts that after two years of kindergarten, he went on to complete an additional three years of elementary school education, after which he departed Mexico and entered the U.S. in 1981, as claimed. However, the applicant's clarification statement regarding his actual date of first entry is not accompanied by any additional, independent corroborative evidence, such as academic records or transcripts, which might serve to lend support to his rebuttal statement or his claim regarding his date of initial entry.

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. In this case, the affidavits submitted by the applicant in support of the application are lacking basic and necessary information or details and, as such, fall far short of containing what such documents should include in order to render them probative for the purpose of establishing an applicant's continuous unlawful residence during the period in question. The applicant has submitted three affidavits attesting to his continuous residence in the U.S. since 1981. According to the aforementioned affidavit from [REDACTED] Manager of Starlight Originals, Inc., the affiant asserts that, based on his personal knowledge, the applicant has resided in the U.S. since November 1981. However, as [REDACTED] indicates that he had only employed the applicant since 1990, the basis for his awareness regarding the applicant's residence in the U.S. since 1981 is not clear. The remaining two affidavits attesting to the applicant's U.S. residence since 1981 are from individuals who identify themselves as relatives or close family members. Such affiants must be viewed as having an obvious interest in the outcome of proceedings, rather than as independent, objective and disinterested third parties.

It should also be noted that the applicant in this case has submitted *no* contemporaneous documentation to establish presence in the U.S. from the time he claimed to have commenced residing in the U.S. through May 4, 1988. In light of the fact that the applicant claims to have continuously resided in the U.S. since 1981, this inability to produce any contemporaneous documentation of residence raises serious questions regarding the credibility of his claim.

Given the applicant's failure to credibly resolve the issue raised in the notice of intent to deny regarding his actual date of entry into the U.S., his reliance on affidavits which do not meet basic standards of probative value,

and the absence of any contemporaneous documentation, it is concluded that he has failed to establish continuous residence in an unlawful status from prior to January 1, 1982 through May 4, 1988, as required.

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