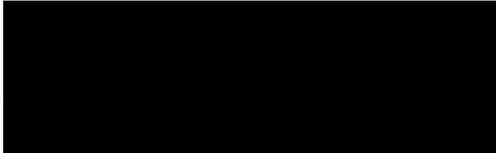




U.S. Citizenship
and Immigration
Services

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FILE:



Office: Baltimore

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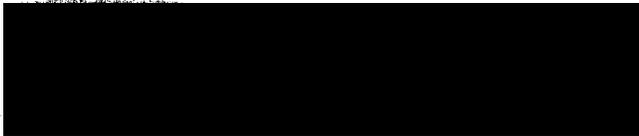
IN RE:

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:



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, Baltimore, Maryland, 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, counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988.

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).

In an attempt to establish continuous unlawful residence since before January 1, 1982, as claimed, the applicant furnished evidence including ten original paycheck stubs, an employment letter, and a letter from a church official. The testimony within this supporting documentation is generally consistent with the applicant's listing of his places of residence and employment on the Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (INA). Furthermore, counsel's contention that the applicant's inability to produce additional contemporaneous evidence of residence is due to the passage of a considerable period of time is considered to be a reasonable explanation in these circumstances.

In this instance, the applicant submitted evidence that tends to corroborate his claim of residence in the United States during the requisite period. The district director has not established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. As stated on *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the proof is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The letters and contemporaneous documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

However, at issue in these proceedings is whether the applicant continuously resided in an **unlawful status** for the requisite period. The district director failed to consider this issue in its entirety in denying the application and such issue must now be examined to determine the applicant's eligibility for adjustment to permanent residence under section 1104(c)(2)(B) of the LIFE Act. 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).

Section 1104(c)(2)(B) of the LIFE Act states:

- (i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.
- (ii) Nonimmigrants - In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, such alien must establish that the period of authorized stay as a nonimmigrant expired before such date through the passage of time or that the alien's unlawful status was known to the Government as of such date.

The word "Government" means the United States Government. An alien who claims his unlawful status was known to the Government as of January 1, 1982, must establish that prior to January 1, 1982, documents existed in one or more government agencies so, when such documentation is taken as a whole, it would warrant a finding that the alien's status in the United States was unlawful. *Matter of P-*, 19 I. & N. Dec. 823 (Comm. 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 on March 25, 1991. With the Form I-687 application, the applicant included two separate "Affidavit for Determination of Class Membership in League of United Latin American Citizens v. I.N.S. (LULAC)." At question #6 of the LULAC determination forms where applicants were asked to list the date of their first entry into the United States, the applicant listed "September 22, 1981." At question #7 of the LULAC determination forms where applicants were asked how they entered the country at that time (location, class of admission), the applicant responded "With Visitor Visa." At question #8 of the LULAC determination forms where applicants were asked how they had violated their status, the applicant answered "Visa Expired/Worked in U.S." A review of Immigration and Naturalization Service's, or the Service's (now Citizenship and Immigration Services, or CIS) practices and procedures in effect on the date the applicant claimed to have entered this country reveals that aliens possessing a B-2 nonimmigrant visitor's visa were granted a six month period of authorized upon entry to the United States. As the applicant claimed to have entered the country with a B-2 visitor's visa in September 22, 1981, he would have been granted a period of authorized stay until March 22, 1982. Without evidence that the applicant's period of authorized stay had expired prior to January 1, 1982, it cannot be concluded that he was in an unlawful status through the passage of time as of such date.

Now it must be determined whether the applicant had violated his lawful status as a B-2 non-immigrant visitor prior to January 1, 1982, and whether such unlawful status was known to the Government as of this date. On the LULAC determination forms, the applicant indicated that he also violated his B-2 visitor status by engaging in unauthorized employment. In support of his claim to have engaged in unauthorized employment, the applicant has submitted ten original paycheck stubs reflecting intermittent work performed

by the applicant as a subcontractor of [REDACTED] beginning February 10, 1982 through April 1, 1985. Clearly, the ten pay check stubs submitted by the applicant fail to establish that he engaged in any unauthorized employment before January 1, 1982. Even if the applicant provided evidence to demonstrate that he had been in an unlawful status by working without authorization prior to January 1, 1982, the record contains no evidence that such unlawful status was known to the Government as of this date pursuant to *Matter of P*, 19 I. & N. Dec. 823 (Comm. 1988). Thus, we cannot conclude the applicant was in an unlawful status which was known to the Government as of January 1, 1982, as a result of unauthorized employment.

Congress provided only two ways in which an applicant who had been admitted as a nonimmigrant could establish eligibility for adjustment to permanent residence under section 1104(C)(2)(B)(ii) of the LIFE Act. The first was to clearly demonstrate the authorized period of stay expired prior to January 1, 1982. The second was to show that, although the authorized stay had not expired as of January 1, 1982, the applicant was nevertheless in an unlawful status which was known to the Government as of that date. In doing so Congress acknowledged it was possible to have an authorized stay and yet still be unlawful due to another reason, such as illegal employment. However, the LIFE Act very clearly states the unlawfulness had to have been known to the Government as of January 1, 1982.

The statements of counsel on appeal have been considered. Nevertheless, in this case the applicant has failed to establish that his authorized stay expired prior to January 1, 1982. In addition, the applicant has failed to demonstrate that he was otherwise in an unlawful status that was known to the Government as of January 1, 1982. 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.

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). The applicant has failed to meet this burden.

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