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



U.S. Citizenship  
and Immigration  
Services



L 2

FILE:



Office: Tampa

Date: **JAN 06 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, Miami, Florida, 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 she had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, the applicant declares that she did not fully understand the question asked during her interview regarding her last date of entry into 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).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: An alien shall be regarded as having resided continuously in the United States if 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, and May 4, 1988, 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).

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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The record shows that the applicant filed her Form I-485 LIFE Act application on January 28, 2002. With the Form I-485 LIFE Act application, the applicant included a Form G-325A, Record of Biographic Information, in which specified that she had lived in her native Haiti from her date of birth on March 6, 1951 to December 1987.

The record further shows that the applicant subsequently appeared for the requisite interview relating to her LIFE Act application on December 5, 2003. During the course of this interview, the applicant testified that she did not enter the United States until December 1987. In addition, the record contains a statement that was signed by the applicant at her interview in which she admitted that she first entered the United States in 1987, and that prior to 1987 she had lived in Haiti.

Based upon the applicant's admission that she had not entered the United States until 1987, the district director concluded that the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. Therefore, the district director determined that the applicant was ineligible for permanent residence under the LIFE Act and denied the application.

On appeal, the applicant declares that she did not fully understand the question asked during her interview regarding her last date of entry into the United States. While the applicant claims that she did not fully understand questions relating to her date of entry into this country that had been asked during her interview, such explanation cannot be viewed as compelling enough to ignore her prior admission that she did not enter the United States until 1987.

Even in cases where the burden of proof is upon the government, such as in deportation proceedings, a previous sworn statement voluntarily made by an alien is admissible, and is not in violation of due process or fair hearing. *Matter of Pang*, 11 I. & N. Dec. 213 (BIA 1965). Furthermore, in the absence of exceptional circumstances, a challenge to the voluntariness of an admission or confession will not be entertained when first made on appeal. *Matter of Stapleton*, 15 I. & N. Dec. 469 (BIA 1975).

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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 own admission that she did not enter the United States until 1987, it is concluded that she has failed to establish continuous residence in this country 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.