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U.S. Citizenship
and Immigration
Services



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FILE:



Office: Houston

Date: JAN 12 2005

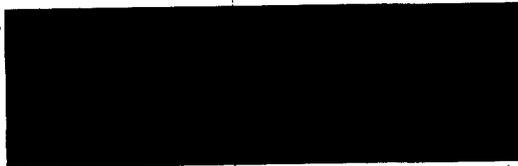
IN RE:

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:



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, Houston, 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 she had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel submits a separate brief in support of the applicant's appeal. In the appeal brief, counsel endeavors to respond to perceived inconsistencies in the applicant's evidence to which the district director referred in his notice of intent to deny.

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] the applicant's sister, who attests to the applicant having resided with her from April 26, 1981 to May 18, 1987;
- 1991 affidavits from [REDACTED] all of whom attest to having been associated with the applicant since March and April of 1980. The affiants also indicate having attended the same church as the applicant.
- The same three affiants submitted subsequent affidavits in response to the notice of intent to deny, in which they attempt to clarify their earlier [1991] affidavits;

- An affidavit from [REDACTED] who attests to having been associated with the applicant since January 10, 1983, and indicates that he and the applicant have attended the same church for some time;
- An affidavit from [REDACTED] who attests to having met the applicant in May 1981, at which time both were employed at the same roofing company;
- An affidavit from [REDACTED] who indicates he had formerly been the owner of Hurtado Roofing, and attests to the applicant having been employed as a roofer from May 30, 1987 to September 29, 1991; and
- An affidavit from [REDACTED] who attests to the applicant having been his tenant from May 30, 1987 to September 29, 1991.

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 observed that information attested to by the applicant at his adjustment interview was in conflict with that included in documentation included in the record of proceedings. Specifically, the district director noted that the applicant informed the examining officer at his interview that he entered the U.S. in April 26, 1981. This information, however, appears to be at variance with that communicated in the aforementioned affidavits from [REDACTED]. These affidavits, all dating from 1991, stated that the affiants have known the applicant since March and April of 1980 based on their having attended the same church as the applicant.

In response to the district director's notice of intent, subsequent clarification affidavits from these same applicants were submitted. According to these subsequent affidavits, the affiants explain that, in their initial 1991 affidavits, they didn't mean to say they had attended church in the U.S. with the applicant since 1980, but merely that they had met the applicant in Mexico in 1980 and subsequently encountered him in the U.S. in 1981, where they and the applicant attended the same church. On appeal, counsel submits a brief in which she imparts a similar explanation for this apparent discrepancy. Counsel's explanation, supported by the subsequent clarification affidavits from the affiants in question, appears to have reasonably and credibly resolved this particular issue raised in the notice of intent.

The notice of intent also referenced a significant discrepancy in the applicant's documentation regarding his claim to continuous residence and his employment in the U.S. during the period in question. Affidavits provided by the applicant in support of his claim to LIFE Act eligibility attest to his residence and employment since 1981. However, the record includes a previously-completed Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (INA), which was purportedly signed by the applicant on February 8, 1991. At item 36 of the I-687 application, at which an applicant is requested to list *all* employment in the United States since his or her *first* entry, the applicant listed only his employment at Hurtado Roofing from May 30, 1987 to September 29, 1991, which is

supported by the employment affidavit from Nabor Hurtado. No other, *prior* employment is indicated at this item. In addition, at item 33 on the I-687, in which an applicant is requested to list *all* residences in the United States since his or her *first* entry, the applicant indicates having resided at [REDACTED] Texas, from May 30, 1987 to September 29, 1991. This, in turn, is supported by the aforementioned affidavit from [REDACTED] which attested to the applicant having been the affiant's tenant from May 30, 1987 to September 29, 1991. However, once again, no other residences *prior to May 30, 1987* are listed at this item. As such, the information included on the applicant's I-687 directly contradicts his claim, interview testimony and supporting affidavits, all of which attested to residence and employment since 1981. On appeal, counsel does not even attempt to address this serious discrepancy in the applicant's claim and documentation.

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, neither counsel nor the applicant have attempted to explain, address or resolve the aforementioned discrepancy regarding his continuous residence and employment. This, in turn, seriously diminishes the credibility of his claim and supporting documentation. 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. 512 (BIA 1988).

In addition, several of the affidavits submitted by the applicant fail to specify the basis of the affiant's knowledge or exactly how the affiants became acquainted with the applicant. The aforementioned affidavit from purported co-worker [REDACTED] claims the affiant and applicant were employed by the same roofing company, but fails to even *identify* that employer. Additionally, in at least four of the affidavits where the affiants are requested to indicate the basis for the affiant's association with the applicant, the language included in the affiant's response is identical, word-for-word. Such affidavits give the appearance of having been prepared for the affiants rather than by the affiants.

Moreover, nearly half of the supporting affidavits provided by the applicant appear to be from individuals who are relatives or close family members. Such affiants must be viewed as having an interest in the outcome of proceedings, rather than as independent and disinterested third parties. The applicant has provided no explanation as to why he was unable to submit more affidavits from individuals with presumably little or no interest in these proceedings such as neighbors, employers, colleagues, co-workers or acquaintances, in addition to family members.

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 serious discrepancy in his supporting documentation regarding the duration of his residency and employment in 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.