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**U.S. Citizenship
and Immigration
Services**

22

[Redacted]

FILE:

[Redacted]

Office: Baltimore

Date:

IN RE:

Applicant:

[Redacted]

MAR 24 2005

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:

[Redacted]

PUBLIC COPY

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

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 Interim District Director, Baltimore, 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 for the applicant submits a separate statement, in which he asserts that in denying the application, the district office has failed to take into consideration either the applicant's evidence or his testimony.

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 envelope addressed to the applicant at a Miami, Florida post office box, which carries a postmark date-stamped January 23, 1985;
- A photocopy of a cancelled check from the applicant with a bank date-stamp of September 20, 1983;
- An appointment card dated April 4, 1986 from Miami-Dade Community College, requesting that the applicant register for the 1985-1986 Spring Term;
- A handwritten receipt dated November 5, 1986 from Rent-A-Center made out to the applicant;
- A handwritten merchandise receipt dated October 23, 1981 made out to the applicant from Oxford Shops;

- A financial aid award and promissory note dated January 7, 1986, made out to the applicant from Miami-Dade Community College/North;
- A notarized statement from [REDACTED] attesting to having first met the applicant in the U.S. in January 1981 and having attended Miami-Dade Community College with the applicant from 1983 to 1986;
- An affidavit from [REDACTED] attesting to having known the applicant since 1983, and to having attended Miami-Dade Junior College with the applicant, where the two were roommates;
- A declaration from [REDACTED] attesting to having shared the premises at [REDACTED] with the applicant from August 1981 to September 1982, and to the applicant having continuously resided in the U.S. since that time; and
- An affidavit from [REDACTED] who attests to having been associated with the applicant since 1982 and to having been a fellow student of the applicant at Miami-Dade College in 1983, as well as a neighbor of the applicant at [REDACTED] Miami, Florida from 1983 to 1989.

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, third-party statements and contemporaneous evidence provided by the applicant could possibly be considered as evidence of continuous residence during the period under discussion, questions have arisen with regard to discrepancies in the applicant's documentation which impact on the overall credibility of his claim. In his decision of February 6, 2004, the district director observed conflicting information contained in the applicant's documentation. It was noted that, while the applicant affirms his continuous residence in the U.S. from prior to January 1, 1982 through May 4, 1988, he has submitted academic records indicating he did not begin attending classes at Miami-Dade Community College until the fourth quarter of 1982. However, upon examination, the applicant's claim to having entered the U.S. prior to January 1, 1982 does not appear to be mutually exclusive with his decision to subsequently attend college classes in late 1982.

In his decision, the district director also observed various other apparent inconsistencies in the applicant's documentation. The aforementioned affidavit from [REDACTED] indicates the applicant and affiant were roommates at [REDACTED] Miami Florida, from August 1981 to September 1982. However, at item 33 of the applicant's application Form I-687, where the applicant endeavored to list all of his places of residence in the U.S. since 1981, this particular address is *not* included. In addition, the affidavit from [REDACTED] indicates that the affiant and applicant have been associated since 1982, and that the affiant and applicant were neighbors at [REDACTED] Miami, Florida, until 1989. However, this address also fails to appear at item 33 of on the applicant's I-687 application.

An additional contradiction in the applicant's documentation noted in the district director's decision concerned the aforementioned statement from [REDACTED] in his statement, [REDACTED] attested to having first met the applicant in the U.S. in *January 1981*. However, the applicant specified to the examining officer under oath on the occasion of his January 22, 2004 interview that his initial entry into the U.S. did not occur until *May 1981*. The applicant's interview statement is supported by his own personal affidavit dated June 17, 1991, in which he stated that he "first entered the United States in May 1981."

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, on appeal, have attempted to address, explain or resolve these significant discrepancies in the record as noted in the district director's decision. This, in turn, seriously diminishes the credibility of the applicant's 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. 582 (BIA 1988).

Given the applicant's failure to address or resolve the aforementioned significant inconsistencies and discrepancies regarding the documentation provided in support of his claim to residence, it is concluded that he has failed to credibly 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.