U.S. Department of Homeland Security
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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: Los Angeles Date: JAN 26 2005

IN RE: Applicant: [redacted]

APPLICATION: 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]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has 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, Los Angeles, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, counsel states that the Notice of Intent To Deny provided th[redacted] stated under oath that he entered the United States on January 6, 1982 and not December 1981 as set forth in his adjustment application. Counsel further states that the notice further provides tha[redacted] visited Mexico for three to four months in 1986. Counsel argues that the applicant did not knowingly and intelligently make these statements as he does not possess the necessary English skills to give such information and that contrary to the federal regulations enacted by Congress to protect Amnesty applicant and now LIFE applicants, the interview in this case was conducted in English. Counsel further argues that this interview should have never been conducted in English in the absence of an interpreter because the applicant is not competent to communicate effectively and clearly in the English language. Counsel emphasizes that the applicant failed the English examination provided to him at the interview and that prevented the examiner, by law, from further conducting the interview. Counsel asserts that given that the entire interview was invalid as the applicant should have never been questioned in English, the applicant is entitled to a new interview with the assistance of an interpreter so that he can fully answer the necessary questions for this legalization process and that to hold otherwise would clearly result in a blatant and egregious violation of Mr.[redacted] right to Due Process.

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. *See* 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. *See* 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 CIS 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).

On appeal, counsel argues that the interview in this case was conducted in English whish was contrary to "the federal regulations enacted by Congress" to protect LIFE applicants. Counsel does not provide any legal citations to support his assertions. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In this case, the applicant was claiming to have lived in the United States for over thirty years and was applying for a benefit that required him to show a command of the English language. The record reflects that the applicant actually passed the English language examination that was administered to him at his interview. It was reasonable for the director to conduct his interview in the English language, especially in light of the fact that the applicant was entitled to representation and could have brought someone with Spanish language skills with him to his interview. *See* 8 C.F.R. 292.1.

The record contains the applicant's English language affidavit that appears to be in his handwriting that he signed before an immigration officer at his interview on February 2, 2004. In that document, the applicant stated that he came to the United States on January 6, 1982 and that he returned to Mexico in 1986 to see his mother and that he stayed abroad for three or four months. This would indicate that the applicant had been absent from the United States for 90 to 120 days in 1986, – far exceeding the 45-days limit allowable for single absences from the United States. Additionally, his testimony indicates that he came to this country too late to qualify for the benefit sought.

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