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U.S. Citizenship
and Immigration
Services

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MAR 02 2005

FILE: [Redacted]

Office: Los Angeles

Date:

IN RE: Applicant: [Redacted]

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

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 (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, the applicant submits a separate statement in which he attempts to account for apparent discrepancies between the information included on his documentation and that conveyed at the time of his testimony at his adjustment interview.

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. 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:

- A affidavit from [REDACTED] who attests to the applicant having been the affiant’s tenant at [REDACTED] 1985 to May 1989;
- An affidavit from [REDACTED] who attests to the applicant having worked for him from June 1985 to May 1989, and to the applicant having resided in the U.S. since 1985;
- An affidavit from [REDACTED] attesting to the applicant having departed the U.S. for his native Mexico on September 13, 1987 and having returned to the U.S. on October 10, 1987;

- A letter from [REDACTED] of Guadalupe in Ontario, California, who asserts that the applicant has been a member of Fr. Perez's parish since the applicant's arrival in Ontario, California in April 1985;
- Photocopies of money order receipts issued to the applicant, which date from 1982 and 1983; and
- Photocopies of registered [REDACTED] envelopes either sent by or to the applicant, carrying postmark dates from 1981, 1982 and 1984.

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 residence and employment affidavits and photocopied postmarked envelopes and money order receipts could possibly be considered as evidence of continuous residence during the period under discussion, certain questions have arisen with regard to discrepancies in the applicant's documentation which impact on the overall credibility of his claim and supporting documentation.

In the notice of intent to deny, the district director observed that from 1981, when the applicant claimed to have first entered the U.S., until 1984, he was employed as a house painter. However, at item 36 on his I-687 application, in which an applicant is requested to list *all* employment since date of first entry, the only employment indicated by the applicant was employment for Silver Spur Corporation since November 1989. In addition, the aforementioned photocopied envelopes provided by the applicant indicated several addresses for the years from 1981 to 1984: (1 [REDACTED]

[REDACTED] Yet, at item 33 on the I-687 application, in which an applicant is requested to list *all* residences in the U.S. since his or her date of first entry, the applicant listed only the address at [REDACTED] as his residence from February 1981 through January 1985. It was also observed on the notice of intent to deny that the aforementioned affidavit from [REDACTED] specified that the applicant was the affiant's tenant at [REDACTED] from March 1, 1985 to May 1989. This, in turn, also contradicts the applicant's own I-687 application, which listed only the [REDACTED] address for the same time period.

In his statement on appeal, in response to the inconsistencies set forth in the notice of intent, the applicant asserted that he listed on the Dell Street address at the time he completed his I-687 application because he did not have all his documentation readily available at the time, and the Dell Street address was the only one listed on his check cashing identification card. The applicant further asserted that he listed only his current employer on his I-687 because he was not requested to list all of his employers since he first entered the U.S. As to why he neglected to include additional addresses on his I-687 during the period from 1981 to 1985, the applicant again attributed the omission to the fact that he did not have all his documentation available to him at the time he completed this document.

The applicant's attempts, on appeal, to explain and resolve the inconsistencies in his documentation and interview testimony are less than credible. As noted earlier, an applicant completing the I-687 application is specifically requested at item 36 to list each and every employer since the date he first entered the U.S. The applicant's attempt, on appeal, to assert that he was only requested to list his current employer is clearly contrary to fact.

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). While not mentioned in the notice of intent, an examination of the record discloses an additional discrepancy concerning the applicant's continuous residence in the U.S. during the period from 1981 through 1988. On the applicant's G-325A Biographic Information Form, submitted along with his LIFE application, he indicated that, on May 10, 1985, he was married in Mexala Guerrer, Mexico. However, at item 35 of his I-687 application, in which an applicant is requested to list any and all absences from the U.S. since January 1, 1982, the only departure from the U.S. listed by the applicant was that from September 13, 1987 to October 10, 1987, when the applicant claimed to have traveled to Mexico as a result of a family emergency. Moreover, item 32 on the I-687 -- which the applicant completed in July 1990 -- specifies that an applicant completing the form provide a listing of *all* close relatives including spouses, former spouses, children and siblings. Yet, the *only* relatives included by the applicant are his three brothers. No mention is made of the applicant's spouse or his children, despite the fact that, according to the applicant's subsequently-completed LIFE Application, his first two children had already been born on February 21, 1986 and June 4, 1987, respectively.

As noted above, an applicant for permanent residence under the LIFE Act must establish that no single absence from the United States has exceeded *forty-five (45) days*. In this case, the applicant provided no information on his I-687 application or anywhere else in his documentation to indicate that he departed the U.S. for Mexico in May 1985 for the purpose of getting married. Nor, in this connection, has he attempted to clarify the exact duration of that departure.

There is no credible attempt by the applicant to resolve the aforementioned serious discrepancies or to explain the significant omissions in the documentation. This, in turn, serves to further diminish the credibility of the applicant's claim and supporting evidence. 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).

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. The applicant in this case has provided no affidavits or third-party statements to indicate that he resided in the U.S. prior to 1985. In view of the his claim to have continuously resided in the U.S. since February 1981, it would not be unreasonable to expect him to have provided testimony from other individuals to support such claim.

It is concluded that the applicant has failed to credibly establish having continuously resided in the U.S. 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.