



U.S. Citizenship
and Immigration
Services

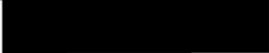
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FILE:



Office: DALLAS

Date: DEC 21 2006

MSC 01 346 60153

IN RE: Applicant:



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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "R. P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Dallas, Texas, 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 he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, the applicant states he has submitted substantial documentary evidence including affidavits from family members and former employers. The applicant asserts that the evidence in the record was not given proper consideration and that he has met his burden of proof and established his eligibility for permanent resident status under the LIFE Act.

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. 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).

Citizenship and Immigration Services (CIS) regulations provide an illustrative list of contemporaneous documents that an applicant may submit to establish presence during the required period. 8 C.F.R. § 245a.15(b)(1); *see also* 8 C.F.R. § 245a.2(d)(3)(vi)(L). Such evidence may include employment records, tax records, utility bills, school records, hospital or medical records, or attestations by churches, unions, or other organizations so long as certain information is included. The regulations also permit the submission of affidavits and any other relevant document, but applications submitted with unverifiable documentation may be denied. Documentation that does not cover the required period is not relevant to a determination of the alien's presence during the required period and will not be considered or accorded any evidentiary weight in these proceedings.

The applicant is a class member in a legalization class-action lawsuit and as such, was permitted to and did previously file a Form I-687, Application for Temporary Resident Status pursuant to Section 245A of the Immigration and Nationality Act (Act). On September 11, 2001, the applicant filed this Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act. In support of the application, the applicant submitted employer and landlord letters, bank and medical records, and date stamped envelopes addressed to the applicant.

On June 5, 2003, CIS issued a Form I-72 request for documentary evidence. Specifically CIS noted that a businesses providing one of the applicant's employment letters did not exist and

requested additional documentary proof that the businesses existed and that the applicant had arrived prior to January of 1982. The applicant was given 30 days to respond but failed to do so.

On July 11, 2003, CIS issued another Form I-72 request for documentary evidence. CIS stated that "neither business from work letters still exists from the 1980s so updated letters with proof that the business existed (state tax licenses or federal income tax statements) will be required." The applicant did not respond to the request.

On December 18, 2003, the Service sent a Notice of Intent to Deny (NOID) detailing that the applicant had failed to provide sufficient evidence of his presence during the required time period. The NOID gave the applicant 30 days to provide additional evidence.

In response, the applicant submitted additional documentation and stated that he was submitting evidence of bank account activity and correspondence with an attorney "between 1981 and 1984." The evidence submitted in response to the director's NOID included several bank account statements, bank receipts, and post-marked envelopes dated from September of 1982 through 1985.

On February 20, 2004, the director denied the application concluding that the applicant had not established that he arrived prior to January 1, 1982, and resided continuously in an unlawful status in the United States until May 4, 1988. However, the director stated that the applicant did not provide any new evidence in response to the NOID and did not address any of the evidence that had been submitted.

The applicant has submitted sufficient documentation to establish that he was more than likely residing in the United States from September of 1982 through the date of filing this petition. This documentation includes bank statements, bank receipts, letters from former landlords, and date-stamped envelopes. This documentation indicates a presence on a regular basis and covers the period after September of 1982 through to the date of the filing. However, the applicant failed to establish that he was in unlawful continuous residence. There is insufficient evidence corroborating the date of the applicant's alleged arrival on May 20, 1981. The applicant failed to establish that he entered the United States prior to January 1, 1982 and continuously resided in unlawful status through May 4th of 1988.

The applicant has asserted that he arrived in the United States at Buffalo, New York, on May 20, 1981. In support of this assertion and relevant to the period at issue the record includes the following evidence:

- Affidavit dated August 11, 1989, from [REDACTED] stating that the applicant lived in Bronx, New York from May 20, 1981 through November 30, 1987.
- Letter dated June 14, 1990, from [REDACTED] stating that the applicant worked as a mechanic at the Bani Service Station in New York, New York, from "July 15, 1981 to March 1987."

- Letter dated January 19, 1990, and signed by [REDACTED], stating that the applicant was treated for right shoulder problems in June of 1981.
- Document with a typed date of October 1981, labeled "Speed Message", and bearing the name and address of [REDACTED] directed to the applicant, and addressing birth certificate affidavits "in preparation for your Permanent Residence interview."

As stated in 8 C.F.R. § 245.15(b)(1), a list of evidence that may establish an alien's continuous residence in the United States can be found at § 245a.2(d)(3).

As noted by the director a key piece of the applicant's evidence for this period cannot be verified. The letter from Bani Service Station has no verifiable information, is not notarized, and contains little detail about the applicant such as his address.

The *Matter of E-- M--*, 20 I&N Dec. 77 (Comm. 1989) provides guidance in assessing evidence of residence, particularly affidavits. In that case, the applicant had established eligibility by submitting (1) the original copy of his Arrival Departure Record (Form I 94), dated August 27, 1981; (2) his passport; (3) affidavits from third party individuals; and (4) an affidavit explaining why additional original documentation is unavailable. Furthermore, the officer who interviewed that applicant recommended approval of the application, albeit, with reservations and suspicion of fraud. In this case, the interviewing officer recommended denial of the application, and there is no Form I-94 or admission stamp in a passport establishing the applicant entered the United States prior to January 1, 1982.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. See 8 C.F.R. § 245a.2(d)(3)(v).

The affidavit submitted by [REDACTED] does not give any specific, verifiable information relating to the applicant's address or residence during the period in question. The account statement submitted by the applicant has an illegible date, which looks like it has been written over prior to copying, and is of little probative value. The petitioner submitted a speed message with an electronic date of October 10, 1981, but this document refers to a residence interview for the applicant and raises an additional question about the status the applicant was in at that time. The applicant submitted a Form I-765, Application for Employment Authorization, on September 11, 2001, which has been consolidated with this file and is now part of the record. On the applicant's Form I-765 he states his manner of entry was as a "visitor." The assertion that he entered is a visitor is inconsistent with his assertion that he entered without inspection. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation. The minimal evidence furnished in this case cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.12(e). In this case, it could not be verified that the applicant's alleged employer actually existed. The letter from [REDACTED] does not reveal its source of information, and there are no copies of medical records or payment receipts verifying the date of the applicant's visit to [REDACTED]. Certain items of evidence in the record raise questions about the date and manner of the applicant's entry into the United States.

On September 10, 1990, the applicant gave sworn testimony before an officer of legacy INS (now CIS) that he had entered the United States by presenting the passport of another person during inspection on two separate occasions. This contradicted the applicant's assertion on his class membership questionnaire form that he had entered without inspection, and further clouds the facts surrounding the applicant's actual date of entry and status upon entry and status on January 1, 1982. However, the applicant claims that his passports were taken each time and he cannot provide any copies of the passports or of the I-94s. Thus the applicant's lack of probative credible evidence leaves unanswered several material questions such as when the applicant actually arrived and what status he was in, and fails to support the applicant's factual assertions such as the use of another individual's passport, and that his status was unlawful and known to the government on January 1, 1982.

It is concluded that the applicant has failed to establish, by a preponderance of evidence, continuous unlawful residence from prior to January 1, 1982, until May 4, 1988. Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

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