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U.S. Department of Homeland Security
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536

FILE: [REDACTED]

Office: BALTIMORE

Date:

OCT 16 2003

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).

IN BEHALF OF APPLICANT: [REDACTED]

PUBLIC COPY

INSTRUCTIONS:

Attached is the decision rendered on your appeal. The file has been returned to the office that processed your case. If your appeal was sustained, or if your case was remanded for further action, the office will contact you. If your appeal was dismissed, you no longer have a case pending before this unit, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann
for

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 Acting District Director, Baltimore, and is now before the Administrative Appeals Office on appeal. This matter will be remanded for further action and consideration.

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 states that the applicant has provided evidence of his continuous residence for the qualifying years and that the applicant should be granted resident status.

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).

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 from before January 1, 1982, as claimed, the applicant furnished the following evidence:

- (1) a copy of a Certificate of Merit from the Government of the District of Columbia dated May 30, 1988.
- (2) A copy of the [REDACTED] Promotional Exercises program for 1988-1989 identifying the applicant as the "presenter of the class gift."
- (3) A copy of an enrollment letter stating that the applicant was a student at Ross Elementary School from September 1982 to June 1989.
- (4) A copy of a Charlene Drew Jarvis Science Award dated June 16, 1989.

- (5) A copy of the applicant's progress report for 1988-1989 for John W. Ross Elementary School.
- (6) A copy of an Outstanding Latino Student Award for 1989.
- (7) A copy of a Computer Achievement Award dated June 15, 1989.
- (8) A copy of a Certificate of Promotion from John Ross Elementary School awarded June 15, 1989.
- (9) A copy of a Physical Education and Physical Fitness Certificate from John Ross Elementary School for 1989.
- (10) A copy of an Outstanding Student Certificate in Math dated June 6, 1988.
- (11) A copy of an American Red Cross Basic Aid Training certificate presented May 26, 1988.
- (12) A copy of a Certificate of Award for Basketball issued June 6, 1988.
- (13) Copies of Certificates of Award for High Academic Achievement, Art and Music issued June 15, 1989.
- (14) A copy of a Certificate of Achievement in Citizenship issued June 15, 1989.
- (15) A Certificate of Promotion to 9th Grade issued June 14, 1991.
- (16) A copy of an Athletic Award for J.V. Football at Einstein High School dated December 7, 1992.
- (17) A copy of an enrollment letter stating that the applicant was a student at Foundry Child Development Center in 1981-1982.
- (18) Copies of three family photos with notes explaining when and where the photos were taken as well as identifying the individuals in the photos.

The applicant also provided a photocopy of the passport he and his mother shared, which includes an admission stamp verifying their February 23, 1980 entries into the United States and their B-2 visitor visa.

In addition, the applicant provided a copy of a Documentation of Immunization showing that he received inoculations in 1981, 1984,

1985, 1986 and 1988, apparently at the Silver Spring, Maryland Medical Center.

In rebuttal to the notice of intent to deny, the applicant submitted the original letters of enrollment from Foundry Child Development Center and Ross Elementary School.

The director conceded that the applicant established that he was in the United States and in an unlawful status on May 23, 1980. Unlike the vast majority of legalization applicants in the original legalization program and now in the LIFE program, the applicant has provided official government proof of entry into the United States well before 1982. Thus, a determination of whether he thereafter resided in the United States must at least begin with the knowledge that he definitely was in the United States in 1980. There is no indication in the record that the director checked Citizenship and Immigration Services (CIS) computer records and verified that the applicant made subsequent documented departures and reentries to the United States. While it is possible the applicant reentered without inspection, the absence of such records of documented departures and entries tends to support the applicant's claim that he resided continuously in the United States after his entry in 1980.

The director correctly pointed out that the applicant's file lacks official school records regarding his enrollment and that the applicant failed to establish that such records cannot be produced. However, counsel is also correct in stating that it is quite plausible that the applicant is unable to provide official school records because they are not retained by the family or the school for so long a period. Conversely, it is highly likely that the applicant and his family would retain the types of school awards and certificates placed into evidence by the applicant. Realistically, the many awards and certificates from the 1988-89 period very strongly suggest that, in order for the applicant to have done so well, he would have to have been attending school in the United States for at least a few years prior to that period.

The regulations at 8 C.F.R. § 245a.2(d) provide a list of documents that may establish residence and specify that "any other relevant document" may be submitted. The director did not establish that the information in the letters from the schools was inconsistent with the claims made on the application, or that it was false information. As stated in *Matter of E--M--*, supra, when something is to be established by a preponderance of evidence, the applicant only has to establish that the proof is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence.

It is noted that much of the evidence of residence in this matter does not directly relate to the requisite period of January 1, 1982 through May 4, 1988. However, the evidence in this type of proceeding must be viewed collectively, not in isolation, in order that an overall inference be made. The applicant has proven he entered the United States before January 1, 1982. The voluminous evidence from 1988-1989 not only demonstrates residence during that period but leads to a conclusion that the applicant was enrolled in school in the United States prior to that. The inoculation records and letters from schools do support the applicant's 1982 through 1988 residence claim, notwithstanding the director's concerns regarding the lack of official school documentation.

The applicant's inability to submit additional contemporaneous documentation of residence is not found unduly implausible, considering all factors. It is concluded that the applicant has been residing unlawfully in the United States since January 1, 1982.

The applicant has already demonstrated that he meets the requirements of section 312 of the Immigration and Nationality Act (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States). See 8 C.F.R. 245a.3(b)(4). This matter will be remanded in order that the director ascertain whether the applicant is eligible in all other respects and whether the validity of the fingerprint checks and record checks has expired. The director shall complete the adjudication and render a new decision which, if adverse, shall be certified to this office.

ORDER: This matter is remanded for further action and consideration pursuant to the above.