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

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[Redacted]

FILE:

[Redacted]

Office: Los Angeles

Date **AUG 03 2004**

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.

Handwritten signature of 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 sustained.

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 asserts that the inconsistencies cited in the district director's decision regarding the applicant's actual date of initial entry into the U.S. were the result of his nervousness and confusion on the occasion of his adjustment interview at the Los Angeles District Office of Citizenship and Immigration Services (CIS).

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

- Originals of Mobil credit card receipts in the name of the applicant dating from 1980, 1981 and 1982, respectively;
- Traveler's Express purchaser's receipts signed by the applicant, which indicate the following dates: September 25, 1982, March 4, 1983, September 5, 1984, September 30, 1984, November 7, 1985 and June 7, 1986;
- A typed letter along with an unnotarized form affidavit, both from [REDACTED] attesting to the applicant having performed handyman/gardening employment for the affiant once a week from February 1980 through November 1982;
- A handwritten employment letter [with business card affixed] from [REDACTED] Los Angeles Terminal Operations (Mobil Oil Corporation), attesting to the applicant having miscellaneous employment for the affiant since March 1980, including running errands, domestic chores, yard work, and general maintenance;

- An employment declaration [with business card affixed] from [REDACTED] owner of [REDACTED] Service, Inc., attesting to having employed the applicant from 1983 to 1985 as a maintenance helper;
- An employment verification form letter from [REDACTED] owner of [REDACTED] Angeles, California, attesting to the applicant having been employed as "cook helper" since March 2, 1985;
- An affidavit from [REDACTED] manager of [REDACTED] attesting to the applicant having resided in [REDACTED] California, from 1985 to 1985, and in Monterey Park, California, since 1989. The affiant indicates he is a good friend of the applicant, having first met him in 1985 when he applied for work at the affiant's place of employment;
- An affidavit from [REDACTED] attesting to the applicant having resided in Los Angeles, California from 1983 to 1985, and in San Gabriel, California, from 1985 to 1990. The affiant bases his knowledge on the applicant having resided with him and shared the rent and other expenses; and
- An affidavit from [REDACTED] attesting to the applicant having resided in Duarte, California from 1980 to 1982. The affiant bases his knowledge on the applicant having lived with the affiant and his family immediately after the applicant left his native Mexico and entered the U.S. in 1980.

In this instance, the applicant submitted at least seven affidavits attesting to his residence and employment in the U.S. during the period in question. Affidavits in certain cases can effectively meet the preponderance of evidence standard. As stated on *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. The documents that have been furnished, including affidavits submitted by persons many of whom are willing to testify in this matter, may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

In her decision, the district director noted what appeared to be an inconsistency regarding the applicant's date of entry into the U.S. Specifically, on the applicant's Form for Determination of Class Membership in CSS, the applicant indicated he entered the U.S. in January 1980. However, at his October 31, 2002 adjustment interview, the applicant stated that he entered the U.S. in June 1980. On appeal, the applicant addressed the apparent inconsistency cited in the notice of denial by stating that, at the time of his interview, he was nervous and confused and, as a result, mistook the month of June for that of January. Whether or not one is given to accept the applicant's explanation for this discrepancy, the record does not include a transcript of the applicant's adjustment interview. As such, there does not appear to be a definitive way of resolving this matter. In any event, either *January 1980* or *June 1980* occurred well before the requisite *January 1, 1982* cut-off date for establishing entry and continuous residence in the U.S. Any possible discrepancy regarding these dates must therefore be deemed to be minor, irrelevant and not prejudicial to the applicant's claim.

It should also be noted that, unlike many applicants for permanent residence under the LIFE program, the present applicant has actually provided considerable contemporaneous evidence of residence consisting of *original* credit card and Traveler's Express purchaser's receipts, all of which carry dates from 1980 through 1986.

The affidavits provided by the applicant, along with considerable contemporaneous evidence, support by a preponderance of the evidence that the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.