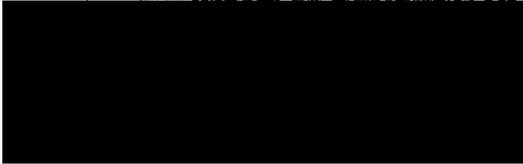




U.S. Citizenship
and Immigration
Services

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invasion of personal privacy



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FILE:



Office: Los Angeles

Date **AUG 03 2004**

IN RE:

Applicant:



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:



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, 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, California, 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 since before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant has submitted sufficient documentation to establish continuous residence in this country since prior to 1981. Counsel reiterates arguments made in his prior response to the notice of intent to deny. Counsel submits documentation in support of the appeal.

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).

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 the 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 his LIFE Act application, the applicant claimed that he first entered the United States in September 15, 1976. The applicant included a Social Security Administration Earnings Statement dated September 13, 2000, and reflecting his earnings in this country from 1976 through 1999. Although this Earnings Statement bears the applicant's home address, his name has a minor misspelling [REDACTED] rather than [REDACTED] and the second page of the statement was omitted. However, it must be noted that the applicant also submitted computer printouts from the Los Angeles, California, District Office of the Internal Revenue Service dated November 2, 2000, and reflecting his taxable earnings in the years from 1989 through 1998 while utilizing the Social Security number [REDACTED]. The applicant's taxable income for each year listed on these printouts tends to match the taxable income for each corresponding year listed in the Social Security Administration Earnings Statement.

The record further shows that the applicant is a class member in a legalization class-action lawsuit and as such, was previously permitted to file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (INA) on or about August 27, 1990. On the Form I-687

application, the applicant indicated that he used the name [REDACTED]” as well as his own name and the Social Security number [REDACTED]. With the Form I-687 application, the applicant included photocopies of his California and Federal tax returns, as well as Form W-2, Wage and Tax Statements for the years 1978 through to 1989. These tax documents reflect that the applicant utilized the Social Security number [REDACTED] in earning taxable income for these years. Furthermore, the applicant’s taxable income for each year listed on these tax documents tends to match the taxable income for each corresponding year listed in the Social Security Administration Earnings Statement discussed in the prior paragraph.

In addition, the applicant also included employment letters signed by [REDACTED] and [REDACTED] respectively, with the Form I-687 application. In her letter, [REDACTED] indicated that she was the Administrator of the [REDACTED] and that this enterprise had employed the applicant in the maintenance department on a full-time basis from September 14, 1977 through May 5, 1988. In the other employment letter, [REDACTED] indicated that that she was the Office Manager of the Empress Convalescent Home in Long Beach, California, and that this enterprise had employed the applicant from December 9, 1988 through August 29, 1988, the date the letter was executed.

On July 28, 2003, the district director issued a notice of intent to deny informing the applicant that his application would be denied because of contradictions between the applicant’s sworn testimony and evidence contained in the record. Specifically, the district director stated that the Social Security Administration Earnings Statement reflecting earned income in 1976 contradicted the applicant’s sworn testimony that he first entered the United States in September 1977. The applicant was granted thirty days to respond to the notice.

In response, counsel submitted a statement in which he advanced various explanations for the deficiencies and contradictions contained in the evidence submitted in support of the applicant’s claim of residence in the United States. Counsel contended that any confusion caused by the applicant’s Social Security Administration Earnings Statements is the result of the Hispanic culture and its use of both the father’s last name [REDACTED] and mother’s last name [REDACTED]. Counsel also declared that supposed contradictions regarding the applicant’s date of entry in this country were caused by an erroneous date listed in the employment letter discussed above by [REDACTED] Administrator of the [REDACTED] Home. Counsel submitted a photocopy of a new and complete Social Security Administration Earnings Statement dated September 11, 2001. While the new earnings statement dated September 11, 2001, contains the same misspelling of the applicant’s name as contained in the prior earnings statement dated September 13, 2000, the new statement contains the same home address and corresponding statement of wages. In addition, the new earnings statement indicated that the applicant utilized the Social Security number [REDACTED] to earn such wages.

While the district director did note that a response was submitted in the subsequent denial notice, no mention was made of either counsel’s rebuttal statement or the supporting evidence included with the statement. If the district director had questions regarding the credibility of the explanations advanced or any supporting documents provided by the applicant or counsel, a request to provide originals of photocopied documents could have been issued. The director did not establish that the explanations advanced on the applicant’s behalf or information in the supporting documents was inconsistent with the claims made either on the application or

in the rebuttal statement, or that such information was false. The applicant's own testimony taken in context with supporting evidence in certain cases can logically meet the preponderance of evidence standard. As stated in *Matter of E--M--*, 20 I. & N. Dec. 77 (Comm. 1989), when something is to be established by a preponderance of evidence, the applicant only has to establish that the proof is probably true. Clearly, the applicant's own testimony, the supporting documents contained in the record, and the rebuttal statement submitted on the applicant's behalf are relevant documents under 8 C.F.R. § 245a.14. As such, the applicant's claim to continuous unlawful residence in the United States since prior to January 1, 1982, must be considered in light of such testimony and evidence.

In *Matter of E-- M--*, *supra*, 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. Unlike the alien in *Matter of E-M-*, the present applicant has provided independent and contemporaneous evidence in support of his claim of residence. Adequate explanation has been provided regarding any minor discrepancies that are contained in this independent and contemporaneous evidence. The supporting documentation submitted by the applicant tends to corroborate his claim that he continuously resided in this country from 1976 through the present date. Therefore, it must be concluded that the applicant has demonstrated that he resided in a continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act.

It must now be determined whether the applicant is otherwise eligible for permanent resident status under section 1140 of the LIFE Act. Accordingly, the matter will be forwarded to the appropriate district office for further processing and adjudication of the LIFE Act application.

ORDER: The appeal is sustained. The director shall forward this matter to the proper district office for the completion of adjudication of the application for permanent residence.