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U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: [Redacted]

Office: Los Angeles

Date: DEC 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:

[Redacted]

PUBLIC COPY

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, 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, counsel for the applicant requests a copy of the applicant's legalization file pursuant to the Freedom of Information Act (FOIA). In his subsequent statement of November 8, 2004, counsel acknowledges that Citizenship and Immigration Services (CIS) has since complied with his request. In addition, counsel addresses and attempts to rebut the district director's determinations as set forth in the notice of intent to deny.

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). 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 letter from [REDACTED] of the [REDACTED], who attests to the applicant having begun to visit the church 1986 and to having become a member the following year in 1987 and remaining a member until 1988, when he moved to California;
- An affidavit from [REDACTED] who attests to the applicant having resided in Los Angeles, California since February 1981. The affiant also states that he has known the applicant since February 1981, when the applicant was working as a maintenance man in the Angelus Temple;
- A letter from [REDACTED] of the [REDACTED] Angeles, California, who attests to the applicant having visited the church in 1981 and becoming a member after 1987, when he moved permanently to Los Angeles; and

- An employment letter dated May 21, 1987 from [REDACTED] Personnel Director, Property Management Systems, Houston, Texas, who indicated that the applicant had been employed by his firm in an unspecified capacity since July 16, 1986.

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 affidavits and third-party statements provided by the applicant could possibly be considered as evidence of continuous residence during the period under discussion, the district director's notice of intent to deny has focused on certain inconsistencies between the applicant's testimony at his adjustment interview and information included in his documentation. Specifically, the district director noted that at his interview, the applicant stated that, following his initial entry into the U.S. in April 1981, he had briefly resided in Houston, Texas, for only a few months, after which he relocated to Los Angeles, where he lived with his brother. According to the district director, the applicant further testified that, while residing in Los Angeles, he was employed in several capacities including gardener and construction worker until 1988, when he was hired at a 7-11 store and then worked in a parking lot. This information, as noted by the district director, is at variance with that provided on the applicant's Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (INA), completed by the applicant on April 24, 1990. On his I-687 application, the applicant indicated that he resided in Houston, Texas from February 1981 until July 1987, when he relocated to Los Angeles, California.

The district director, in the notice of intent to deny, also makes reference to the previously-cited affidavit from [REDACTED]. In his affidavit, dated April 20, 1990, [REDACTED] attests to the applicant having resided in Los Angeles, California since February 1981. The affiant also states that he has known the applicant since February 1981, when the applicant was working as a maintenance man in the Angelus Temple.

It was also stated in the notice of intent that at his adjustment interview, the applicant referred to [REDACTED] as his friend from Hollywood, whom the applicant had encountered while working in a parking lot. However, the previously-cited employment letter from Property Management Systems located in Houston, Texas, lists [REDACTED] as Personnel Director, not as the applicant's friend or acquaintance.

In responding to the district director's observations in the notice of intent to deny, counsel, on appeal, asserts that any perceived discrepancies between the information contained in the affidavit from [REDACTED] and that included in the applicant's I-687 and other documentation were due to the errors on the part of the individual who notarized that affidavit. Counsel also argues that the account set forth in the notice of intent of what the applicant purportedly stated at his interview regarding his having joined his brother in Los Angeles in 1981 does not reflect what the applicant actually stated to the examining officer. In addition, counsel asserts that the applicant's representations regarding [REDACTED] resulted from the applicant's confusion in mistaking [REDACTED] with another individual, [REDACTED], an acquaintance of the applicant.

The district director's observations regarding statements made by the applicant during the course of his adjustment interview cannot be confirmed or denied as the record does not contain a complete transcript of the interview or a signed statement by applicant affirming what transpired during the course of that interview. While counsel, on appeal, asserts that the discrepancies between the applicant's I-687 and related documentation and the affidavit from [REDACTED] resulted from errors on the part of the individual notarizing that affidavit, his assertions in this regard are not supported by any additional, independent corroborative evidence. Counsel's statement that the applicant was not aware of the information contained in this affidavit, which was signed and

attested to by the affiant, [REDACTED] and which the applicant himself submitted in support of his application, is less than credible. Nor has counsel or the applicant attempted to provide any subsequent clarification or explanatory statement from the notary in question which might serve to support counsel's arguments that the information contained in the affidavit was inaccurate or erroneous.

It should also be noted that the applicant in this case has submitted *no* contemporaneous documentation to establish presence in the U.S. from the time he claimed to have commenced residing in the U.S., through May 4, 1988. In light of the fact that the applicant claims to have continuously resided in the U.S. since 1981, this inability to produce any contemporaneous documentation of residence raises serious questions regarding the credibility of his claim. 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. In this case, the applicant has submitted only two affidavits attesting to his residence in the U.S. prior to 1986, one of which has already been deemed by counsel to contain inaccurate information.

Given counsel's failure, on appeal, to credibly resolve the discrepancies raised in the documentation provided in support of the applicant's claim to residence, along with the minimal evidence furnished and the complete absence of any contemporaneous documentation pertaining to this applicant, it is concluded that the applicant has failed to establish continuous residence 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.