

12



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: [Redacted] Office: Dallas 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: Self-represented

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 Interim District Director, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The district director denied the application because the evidence submitted by the applicant had not established 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 due to his having experienced frequent changes of residence, it has been difficult for him to locate evidence to provide in support of his claim to residence in the U.S. during the period in question.

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:

- An Air Mail envelope addressed to the applicant carrying an illegible stamped postmark date;
- A 1980 W-2 Wage and Tax Statement from Richardson Welding Company, Houston, Texas, made out to the applicant;
- A 1985 W-2 Wage and Tax Statement from ABMCOMPUTERS, Inc., Houston, Texas, which is made out to the applicant;
- A photocopy of a Social Security Denial Notice pertaining to the applicant, which is dated March 12, 1981;
- A letter from [REDACTED] Associate Director, [REDACTED] who attests to the applicant having been a regular member of that mosque from June 1985 to June 1988;
- An affidavit from [REDACTED] who attests to the applicant having resided in the U.S. since February 1981;

- Acquaintance letters from [REDACTED] both of whom attest to having known the applicant since 1984, when the applicant, who now lives in Dallas, Texas, resided in Houston, Texas;
- An affidavit from [REDACTED] who attests to having known the applicant since May 1983. The affiant bases his knowledge on having frequented the convenience store where the applicant was employed; and
- An affidavit from [REDACTED] who attests to having known the applicant since 1981. The affiant bases his knowledge on having been the applicant's co-worker and roommate.

In this instance, the applicant submitted six (6) affidavits attesting to his residence in the U.S. during the period in question. Affidavits in certain cases can effectively meet the preponderance of evidence standard. The director has not established that any of the information in the affidavits and statements submitted by the applicant was false or inconsistent or at variance with the claims made by the applicant on the application. 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.

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 in the form of photocopied W-2 Wage and Tax Statements and a Social Security denial notice.

The third-party affidavits provided by the applicant, accompanied by 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.