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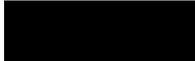


**U.S. Citizenship
and Immigration
Services**



22

FILE:



Office: Dallas

Date: **DEC 22 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 Interim District Director, Dallas, Texas, and is now before the Administrative Appeals Office 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, the applicant submits additional evidence in support of his claim to continuous 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 affidavit from [REDACTED] attesting to the affiant having known the applicant since December 1981. The affiant bases his knowledge on having become acquainted with the applicant since 1982, when they became soccer teammates;
- Two separate employment affidavits from [REDACTED] Service, Arlington, Texas, one dated July 9, 1990 and the other dated May 21, 2003, both of which attest to the applicant having worked for the affiant as follows: from December 15, 1981 to January 20, 1983; from April 10, 1983 to December 5, 1986; and from January 12, 1988 until August 1991;
- An affidavit from [REDACTED] who identifies himself as the applicant's cousin, attesting to the applicant having arrived in the U.S. in December 1981;

- An affidavit from [REDACTED] who identifies himself as the applicant's brother, attesting to the applicant having resided in Ft. Worth, Texas since 1981;
- An affidavit from [REDACTED], who attests to the applicant having resided in Ft. Worth, Texas since December 1982, when the affiant first became acquainted with the applicant;
- A letter from [REDACTED] Ft. Worth, Texas, who indicates that the applicant has been a registered member of that religious organization since 1985; and
- A letter from [REDACTED] who states the applicant was employed in the firm's metal department from January 25, 1983 to April 4, 1983, and from January 14, 1986 to January 4, 1988.

In denying the application, the district director noted that one of the affiants attesting to the applicant's employment during the period in question, [REDACTED] had previously provided CIS with a sworn statement in connection with another proceeding, wherein he purportedly acknowledged having provided fraudulent employment letters. In response, the applicant stated on appeal that he has since been in contact with this affiant, and that the affiant has indicated his willingness to confirm to CIS that the applicant had in fact performed the employment in question. In any event, with the exception of a cursory note attached to one of [REDACTED] statements by a CIS district officer, there is no indication in the applicant's file of the presence of the sworn statement to which the district director refers. As such, any determination as to the veracity of [REDACTED] employment affidavits cannot be rendered based on the record of proceedings.

The applicant in this case has provided at least seven (7) affidavits and third-party statements affirming both the applicant's 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 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. In this connection, it is noted that two of the aforementioned affiants have identified themselves as family members, thus possibly raising questions as to whether or not these individuals could be considered to be truly independent and disinterested parties to this proceeding. Nevertheless, the remainder of the supporting affidavits and statements, furnished by acquaintances and employers who have included their current addresses and phone numbers and have indicated their willingness to come forward and testify in this matter if necessary, may be accorded substantial evidentiary weight and are deemed sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The evidence provided by the applicant establishes, 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.