

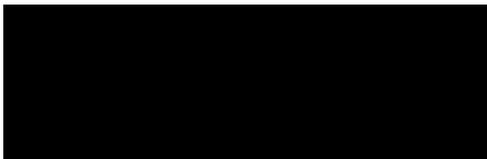
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U.S. Department of Homeland Security  
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U.S. Citizenship  
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FILE: [Redacted]

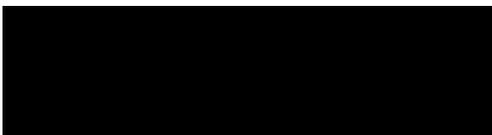
Office: Dallas

Date: DEC 22 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:



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 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 submits additional documentation in support of the applicant's claim to continuous residence in the U.S. since 1981. Counsel also provides evidence, including a personal statement from the applicant, which attempts to address the issue of the veracity of one of the letters attesting to his employment 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 (5<sup>th</sup> 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 Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (INA), which was signed by the applicant on September 28, 1990;
- An affidavit from [REDACTED] attesting to the affiant having known the applicant since January 1982;
- An affidavit from [REDACTED] attesting to the affiant having known the applicant since January 1982;
- An employment affidavit from [REDACTED] dated February 19, 2003 attesting to the applicant having worked for the affiant at [REDACTED] restaurant from November 1981 to November 1983;

- An employment letter dated August 3, 1990 from [REDACTED] Dallas, Texas, who indicates the applicant has been employed by that firm since January 8, 1984;
- An affidavit from [REDACTED] who attests to the applicant having resided with her and her husband from September 1981 to April 1984;
- A photocopy of an affidavit from [REDACTED] who attests to the applicant having resided at [REDACTED] respectively, Dallas, Texas, from May 1984 to December 1987; and
- An employment letter from [REDACTED] Payroll and Human Resources, Re:Source Texas, indicating the applicant has been employed at Re:Source Texas since January 1, 1984;

In her decision, the district director made reference to a February 19, 2003 employment affidavit from [REDACTED] [REDACTED] which attested to the applicant having worked for the affiant at [REDACTED] restaurant during the period in question. According to the district director, in attempting to verify the existence of this employer through state records, it was determined that the firm never held a State Tax Certificate and that the telephone number provided had been disconnected since May 2003.

In response to the district director's determination regarding the applicant's employment affidavit from [REDACTED] [REDACTED] restaurant, counsel submitted the following:

- A personal affidavit from the applicant in which he asserts that the restaurant in question, [REDACTED] had been in operation in Dallas, Texas for over 25 years and that, subsequent to the applicant's employment, the restaurant was re-named "Tapatia;"
- A photocopy of a business card with two telephone numbers provided, indicating the restaurant's name as [REDACTED] and listing the owners as [REDACTED] [REDACTED] was indicated as the affiant on the applicant's employment affidavit]; and
- A photocopy of a Texas Sales and Use Tax Permit listing the [REDACTED] restaurant as the recipient of the permit and the effective dates of the limited sales tax permit as March 14, 1989 through May 23, 1989 [a taxpayer number and outlet number are also listed on the document].

The documentation submitted by counsel and the applicant on appeal appears to have credibly resolved the questions raised in the district director's decision regarding the existence of [REDACTED] restaurant, where the applicant claimed on his I-687 application to have been employed as a dishwasher from November 1981 to November 1983.

In support of his application, the applicant has submitted 7 (*seven*) third-party affidavits attesting to his continuous residence as well as his employment 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 and letters furnished by affiants, acquaintances and employers who have provided 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 sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The documentation provided by the applicant establishes, by a preponderance of the evidence, that he has satisfied 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.