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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services



22

FILE:



Office: Los Angeles

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:

Self-represented

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 on appeal. The appeal will be sustained.

The district director denied the application because the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, the applicant attempts to resolve certain purported inconsistencies mentioned in the district director's decision regarding information included in a printout from the Social Security Administration. The applicant also asserts that he failed to receive the Notice of Intent to Deny pertaining to his case. An examination of the record indicates the notice of intent was subsequently returned to Citizenship and Immigration Services (CIS) by the U.S. Postal Service as undeliverable. Nevertheless, the specific reasons set forth in the notice of intent for denying the application have *also* been included in the district director's subsequent notice of decision, which the applicant *did* receive. As the applicant has already been apprised of the issues involved in denying his application, no discernible purpose would be served in sending him a copy of the notice of intent at this point in time.

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 CIS 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence since prior to January 1, 1982, the applicant submitted the following:

- Several printouts from the Van Nuys, California Social Security Administration District Office, indicating the applicant's earnings during the years 1981 through 1997;
- Photocopied Wage and Tax Statements from P & S Transfer, Inc. made out to the applicant for the years 1981, 1982, 1985 and 1986;

- A photocopy of an earnings statement from [REDACTED], made out to the applicant for the pay period ending October 10, 1982;
- A photocopy of a receipt from the American Savings and Loan Association dated July 2, 1982, which lists the applicant's name and address;
- An affidavit from [REDACTED] who, based on his long acquaintance with the applicant, attests to the applicant having resided in the U.S. since May 1980; and
- A joint affidavit from [REDACTED] who, based on their long acquaintance with the applicant, attest to his having resided in the U.S. since May 1980.

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 evidence provided by the applicant could possibly be considered as evidence of continuous residence during the period under discussion, the district director's decision denying the application indicated a significant inconsistency in the applicant's documentation. Specifically, the evidence submitted by the applicant in support of his application included a 1982 W-2 Wage and Tax Statement from [REDACTED] Van Nuys, California, indicating the applicant's total earnings for that year. The applicant also provided an earnings statement from that firm made out to the applicant for the pay period ending October 10, 1982. Both documents indicate taxes that were withheld for the year.

In attempting to respond to the district director's finding, the applicant submitted a subsequent printout from the Van Nuys, California, Social Security Administration (SSA) office. This subsequent printout, unlike the applicant's previously-submitted printout, does include an earnings figure for the year 1982. As such, the subsequent printout submitted by the applicant on appeal appears to address the district director's questions regarding to the absence of any earnings figure on the SSA printout for the year 1982.

The applicant's attempt to convincingly resolve the matter of what the district director regarded as an inconsistency as to the applicant's date of initial entry is accompanied by the submission of credible supporting evidence of residence. In support of his application, the applicant has submitted third-party affidavits attesting to his continuous residence in the U.S. during the period in question. Affidavits in certain cases can effectively meet the preponderance of evidence standard. 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 information provided by these affiants corroborates the applicant's indication on his LIFE application that he has continuously resided in the U.S. since May 1980. The documents that have been furnished 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, including photocopied earnings statements, bank receipts, W-2 Wage and Tax Statements for the years 1981, 1982, 1985 and 1986, and Social Security Administration printouts indicating the applicant's earnings during the years 1981 through 1987.

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.