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U.S. Department of Homeland Security
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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:

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 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 asserts that, in denying the application, the district office has chosen to disregard the substantial primary and secondary evidence provided by the applicant in support of his claim to continuous residence in the U.S. since 1981.

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 applicant having resided in the U.S. since February 1981;
- An affidavit from [REDACTED] attesting to the applicant having resided in Los Angeles, California since December 1985;
- An affidavit from [REDACTED] attesting to the applicant having resided in Los Angeles, California since January 1983;
- An affidavit from [REDACTED] a cousin of the applicant, attesting to the applicant having departed the U.S. to visit his ailing father on September 10, 1987 and to his having returned to the U.S. on October 21, 1987;
- A communication from [REDACTED] who indicates he has been acquainted with the applicant since April 1986.

- Photocopies of 1988 earnings statements from Beverly Hills Car Wash made out to the applicant;
- A photocopied 1988 W-2 Wage and Tax Statement made out to the applicant by Beverly Hills Car Wash, Los Angeles, California; and
- A photocopied 1988 California Short Tax Form 540A completed by the applicant.

In this instance, the applicant submitted affidavits and third-party statements attesting to his residence in the U.S. during the period in question. The director has not established that the information in the affidavits was inconsistent with the claims made on the application, or that it was false information. Furthermore, 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 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 contemporaneous evidence of residence consisting of photocopied earnings statements and W-2 forms carrying dates from within the period in question.

The evidence provided by the applicant supports, 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.