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U.S. Department of Homeland Security
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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:

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, California, 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, the applicant asserts that he has submitted sufficient evidence to support his claim of continuous residence in this country since prior to January 1, 1982. The applicant provides new documentation, as well as previously submitted documentation in support of his claim of residence.

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).

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).

Although the 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. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant is a class member in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (INA) on or about September 2, 1994. At part #36 of the application, where applicants were asked to list all employment in the United States since the date of their first entry, the applicant indicated that he had been employed as a helper by the [REDACTED] in Gardena, California from August 18, 1981 to July 27, 1984 and again from 1990 to June 18, 1993, the date the Form I-687 application was submitted.

The record shows that the applicant subsequently submitted his Form I-485 LIFE Act application September 3, 2001. In support of his claim of continuous residence in the United States since before January 1, 1982, the applicant submitted two affidavits, four employment letters, a retail membership card, two paycheck stubs, tax returns, and two separate State of California Identification Cards.

In the notice of intent to deny issued on August 22, 2003, the district director questioned the veracity of the applicant's claimed residence in the United States because of apparent conflicts in testimony provided within the

employment letters cited above, as well as the applicant's own testimony regarding his dates of employment for the Arcadia Chair Co. However, an examination of the four employment letters reveals that testimony contained therein is neither conflicting nor contradictory, but instead corroborates the applicant's listing of his periods of employment with this enterprise at part #36 of the Form I-687 application. Furthermore, the applicant has provided another employment letter signed by [REDACTED] Executive Vice President of the [REDACTED] Company, who specifically stated he had failed to include a complete listing of the applicant's employment with this enterprise in his previous letters and that he in fact had been employed from August 18, 1981 to July 27, 1984 and again beginning on September 10, 1990. The explanation provided by both the applicant and Mr. [REDACTED] that any purported discrepancy in testimony contained in these employment letters is the result of an innocent omission is considered reasonable under these circumstances and appears to have credibly resolved the questions raised by the district director regarding applicant's entry into this country prior to January 1, 1982.

It must be noted that the applicant submits two new affidavits of residence and photocopies of two postmarked envelopes in support of his claim of continuous residence in this country on appeal.

In this instance, the applicant submitted evidence, including affidavits, employment letters, tax documents, and government issued identification cards, which tends to corroborate his claim of residence in the United States during the requisite period. The district director has not established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. 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 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 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.