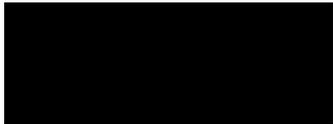




U.S. Citizenship
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Services

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invasion of personal privacy

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invasion of personal privacy



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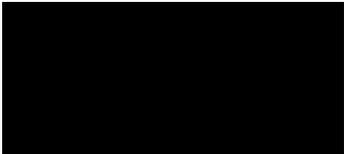
FILE: [Redacted] Office: Houston

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 District Director, Houston, 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 asserts that the applicant has submitted sufficient evidence to support his claim of continuous residence in this country since November 1981. Counsel provides copies of previously submitted documentation in support of the appeal.

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 record shows that the applicant submitted his Form I-485 LIFE Act application on May 21, 2002. In support of his claim of continuous unlawful residence since before January 1, 1982, the applicant has submitted five affidavits of residence, three employment letters, four original receipts, two photocopied receipts, three photographs, an original letter from his mother, and a photocopy of a postmarked envelope.

In the notice of intent to deny issued on July 2, 2003, the district director questioned the veracity of the applicant's claim of residence in this country since November 1981, because of testimony the applicant had previously provided in a sworn statement when he was detained by an officer of the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) on October 26, 1990. While the district director concluded that the applicant's testimony indicated that he first entered the United States at some point in 1989, a review of the applicant's sworn statement does not support such a finding. In his sworn statement, the applicant testified in pertinent part as follows: "I last entered the United States illegally by wading the river near Brownsville, Texas. I have lived in Houston for the past 11 or 12

months.” Clearly, the applicant’s testimony regarded his **last** entry into this country, which had occurred approximately eleven to twelve months prior to the date, October 26, 1990, that he provided the sworn statement. The applicant’s testimony reasonably supports the conclusion that the applicant had made more than one prior entry into the United States before that particular entry he refers to in his testimony. The applicant’s testimony neither contradicts nor conflicts with his claim to have initially entered the country in November 1981, and continuously resided in the United States since such date.

In this instance, the applicant submitted evidence, including affidavits, employment letters, and contemporaneous documents, 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.