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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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DEC 23 2004

FILE:



Office: LOS ANGELES, CALIFORNIA

Date:

MSC-02-039-60517

IN RE:

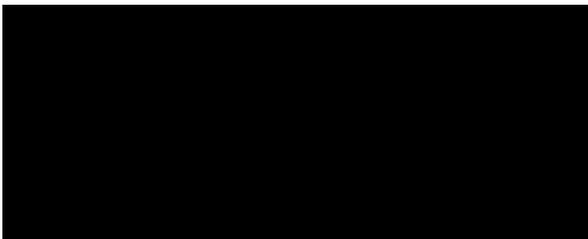
Applicant:



APPLICATION:

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 determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. Therefore, the District Director concluded the applicant was ineligible for permanent resident status under the LIFE Act and denied the application accordingly. *See District Director's Decision* dated January 9, 2004.

The District Director's determination that the applicant was ineligible for permanent resident status under the LIFE Act was based on the applicant's own testimony in a sworn, signed statement taken at the time of an interview at the Los Angeles district office on February 8, 1996. The applicant stated under oath that he first entered the United States with a valid non-immigrant visa on March 3, 1989.

On appeal, counsel asserts that the applicant was coerced by an Immigration Officer into writing the statement. The applicant noted the coercion during his May 7, 2003, interview. In addition counsel states that the District Director erroneously denied the application because the affidavits and the documentation submitted support the applicant's claim of residence for the required period.

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 (the Act). On the Form I-687 application, the applicant indicated that he first entered and began residing in this country in December 1981.

In an attempt to establish continuous unlawful residence since before January 1, 1982, as claimed, the applicant furnished the following affidavits along with other documentation:

- Affidavits from three individuals who provided their address and stated that they have known the applicant since 1981. The affiants base their knowledge on having been personal acquaintances of the applicant;
- Applicant for credit from a telephone company dated February 1982;
- A letter from the [REDACTED] church which states that the applicant has been an active member of the church since September 1981;
- A statement from the [REDACTED] California for the year ending December 31, 1992 and
- Receipts for registered mail sent by the applicant to Peru with the postal date stamps ranging from February 2, 1982 to January 1987.

The regulations at 8 C.F.R. § 245a.2(d) provide a list of documents that may establish residence and specify that "any other relevant document" may be submitted. In this case, the applicant has submitted at least three affidavits and numerous other documentation attesting to his residence in the United States during the requisite period. Affidavits in certain cases can effectively meet the preponderance of evidence standard. The District Director has not satisfactorily 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 and acquaintances who have provided their current addresses 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 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.