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U.S. Citizenship  
and Immigration  
Services

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**DEC 23 2004**

FILE: [REDACTED]  
MSC-01-320-60307

Office: SACRAMENTO, CALIFORNIA Date:

IN RE: Applicant: [REDACTED]

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:

[REDACTED]

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, San Francisco, 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, as required by section 1104(c)(2)(B) of the LIFE Act, and that the applicant was not continuously physically present in the United States during the period beginning on November 6, 1986, and ending on May 4, 1988, as set forth in 8 C.F.R. § 245a.11(c). 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 December 1, 2003.

On appeal, counsel submits a brief and evidence in support of the applicant's claim to having resided continuously in the U.S. from prior to January 1, 1982 to May 4, 1988. In addition counsel states that the District Director erroneously denied the application because the affidavits submitted have no probative value and that the medical receipt from Kaiser Permanent is questionable because the applicant did not submit it before the intent to deny the application.

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 (5<sup>th</sup> 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:

- A Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act, which was signed by the applicant on August 17, 1990;
- Affidavits from two brothers who state that the applicant entered the United States on October 25, 1981;
- An affidavit from the Art Land Galerie which states that the applicant worked for the company from August 1981 through November 1989; and

- An appointment schedule from Kaiser Permanente dated August 5, 1980.

In this instance, the applicant has submitted affidavits and statements attesting to his continuous residence in the United States during the period in question. Affidavits in certain cases can effectively meet the preponderance of evidence standard. The District Director has not 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 and phone numbers, 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.

In his decision the District Director states that the applicant was ineligible for permanent resident status under the LIFE Act because he failed to establish that he was not continuously physically present in the United States during the period beginning on November 6, 1986, and ending on May 4, 1988, as set forth in 8 C.F.R. § 245a.11(c). The record of proceedings reflected that the applicant traveled to Canada in December 1987 and returned to the United States in January 1988. No other absences have been noted in the record of proceedings and based on the documentation provided it has been established that the applicant was working in the United States for August 1981 to November 1989.

The documentation provided by the applicant establishes, 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. In addition the applicant was continuously physically present in the United States during the period beginning on November 6, 1986, and ending on May 4, 1988, as set forth in 8 C.F.R. § 245a.11(c).

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.