

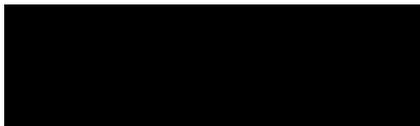
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



**DEC 23 2004**

FILE:   
MCS-02-204-65041

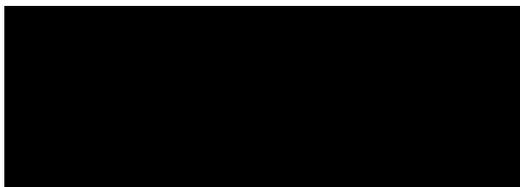
Office: SACRAMENTO, CALIFORNIA

Date:

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, 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. 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 February 11, 2004.

On appeal, counsel submits a brief and states that the District Director erroneously denied the application because the affidavits submitted have no probative value. In addition counsel states that the District Director did not try to contact the affiants in order to confirm the authenticity of the affidavits. Furthermore counsel states that the applicant led the life of a typical illegal alien, he was paid in cash, lived with other aliens and moved and worked from farm to farm and therefore he does not possess any additional evidence to support his 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 two individuals who provided their address and stated that they have known the applicant since December 1981. The affiants base their knowledge on having been personal acquaintances of the applicant and
- Numerous envelopes forwarded from Mexico to the applicant's address in the United States with postal date stamps ranging from 1981 to 1988.

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 two affidavits and numerous envelopes addressed to him 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 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.

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.