

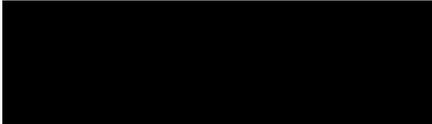
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
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U.S. Citizenship
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FILE:



Office: PORTLAND, OREGON

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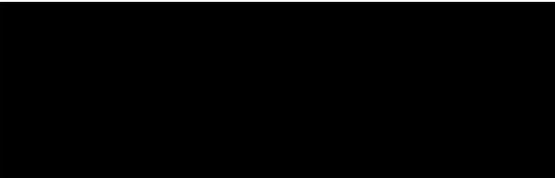
IN RE:

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

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 Interim District Director, Portland, Oregon, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The Interim District Director determined that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. The Interim District Director further determined that the applicant failed to establish that he satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act. Therefore, the Interim District Director concluded the applicant was ineligible for permanent resident status under the LIFE Act and denied the application accordingly. *See Interim District Director's Decision* dated December 17, 2003.

On appeal, counsel asserts that the Interim District Director improperly denied the application since the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. In addition counsel states that the Interim District Director erroneously denied the application due to the fact that the applicant failed to demonstrate "a mastery" of English and American history and government.

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 (5th ed. 1979).

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).

On appeal, counsel asserts that that applicant provided numerous affidavits from different friends and family members that attest to his physical presence in the United States prior to the required date of January 1, 1982.

The record of proceedings reveals three affidavits that attest to the fact that the applicant was physical present in the United States prior to January 1, 1982.

- An affidavit signed by [REDACTED], who provided his address and telephone number and stated that he has known the applicant since April 1979 and that the applicant worked for him part time as a handyman;
- Affidavits signed by [REDACTED] who provide their addresses and telephone numbers and state that they have known the applicant since 1980;

- An affidavit from [REDACTED] who provided his address and stated that he has known the applicant since December 1981; and
- A receipt from a furniture store in applicant's name dated April 10, 1981.

Numerous other affidavits from friends and relatives state that they have personal knowledge that the applicant was in the United States since January 1982.

In this instance, the applicant has submitted affidavits 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 Interim 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 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 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 Interim District Director determined that the applicant failed to establish that he satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act.

Under section 1104(c)(2)(E)(i) of the LIFE Act ("Basic Citizenship Skills"), an applicant for permanent resident status must demonstrate that he or she:

- (I) meets the requirements of section 312(a) of the Immigration and Nationality Act (8 U.S.C. 1423(a) (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States)); or
- (II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

Pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed twice in connection with his LIFE application, on December 17, 2002, and September 8, 2003. On both occasions the applicant failed to demonstrate an understanding of the English language and knowledge and understanding of the history and government of the United States.

Counsel states that the Interim District Director held the applicant to a standard that is higher than what the LIFE Act requires because in his decision he worth that the applicant “. . . failed to demonstrate mastery of both subjects.”

This office finds that although the Interim District Director improperly used the word “mastery” in his decision he correctly applied the regulation at 8 CFR § 245a.17(a) since the applicant failed to demonstrate a minimal understanding of the English language and knowledge and understanding of the history and government of the United States.

On appeal counsel states that 8 CFR § 245a.18(a)(3) [sic] permits the applicant to meet the LIFE Act’s English and civics requirements by submitting evidence that he or she has attended a qualified learning institution involving a qualified curriculum including 40 hours of instruction of civics and English. Counsel submits a Certificate of Satisfactory Pursuit (Form I-699) from Rancho Santiago College, Santa Ana, California dated March 29, 1990. Form I-699 states that the applicant has attended an English language/Citizenship skills course for at least 40 hours.

The “citizenship skills” requirement of section 1104(c)(2)(E)(i)(II) is defined by regulation in 8 C.F.R. § 245a.17(2) and (3). As specified therein, an applicant for LIFE Legalization must establish that:

He or she has a high school diploma or general education development diploma (GED) from a school in the United States. . . . 8 C.F.R. § 245a.17(2), or

He or she has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance. The course of study at such learning institution must be for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and the curriculum must include at least 40 hours of instruction in English and United States history and government. . . . 8 C.F.R. § 245a.17(3).

The evidence provided by counsel supports his statement that the applicant satisfies the “basic citizenship skills” requirement of section 1104(c)(2)(E)(i)(II) of the LIFE Act. The applicant in this case has provided documentation to show that he has attended an English language/Citizenship course at a state recognized institution for at least 40 hours.

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. In addition as stated above the applicant satisfies the “basic citizenship skills” requirement of section 1104(c)(2)(E)(i)(II) of the LIFE Act.

Accordingly, the applicant’s appeal will be sustained. The Interim District Director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.