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

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JAN 05 2004

FILE: [redacted] Office: SAN FRANCISCO, 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 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 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 February 27, 2004.

On appeal, counsel states that the District Director erroneously denied the application because the applicant had shown by preponderance of the evidence that he entered the United States since September 1981 based on the affidavits he submitted from various individuals who had personal knowledge of the applicant's residence in the United States.

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).

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 March 1981.

In an attempt to establish continuous unlawful residence since before January 1, 1982, as claimed, the applicant furnished the following affidavits and letters:

- An affidavit signed by Dilbagh Singh Bains who provided his address and stated that he is the president of the Sikh Temple Gurdwara Yuba City and that he has known the applicant since April

1981. The affiant based his knowledge on having been a personal acquaintance of the applicant and on the fact that the applicant has been an active member of the Temple sine April 1981;

- An affidavit from who provided his address and attests to the applicant having been in the United States since March 1981. The affiant bases his knowledge on having been a personal acquaintance to the applicant;

- An letter from who provided his address and stated that he has known the applicant since April 1981. bases his knowledge on the fact that he was a roommate with the applicant;

- A letter form the which states that according to their medical records the applicant was first seen in their office on May 14, 1981, and has numerous follow up visits un until October 26, 2002

In this case, the applicant has submitted affidavits and letters 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.