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Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services

22

[Redacted]

JAN 27 2004

FILE: [Redacted] Office: BALTIMORE Date:

IN RE: Applicant: [Redacted]

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).

IN BEHALF OF APPLICANT: [Redacted]

INSTRUCTIONS: Attached is the decision rendered on your appeal. The file has been returned to the office that processed your case. If your appeal was sustained, or if your case was remanded for further action, that office will contact you. If your appeal was dismissed, you no longer have a case pending before this unit, and you are not entitled to file a motion to reopen or reconsider your case.

*Robert P. Wiemann for*

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 Acting District Director, Baltimore, and is now before the Administrative Appeals Office on appeal. This matter will be remanded for further action and consideration.

The district director denied the application upon concluding that the applicant had not demonstrated that he had continuously resided in the United States from before January 1, 1982 through May 4, 1988.

On appeal, counsel states that evidence is being sought from over 20 years ago. According to counsel, most people do not accumulate and retain employment letters, school transcripts, or lease agreements over 20 years old. Counsel contends that the best evidence available should be used.

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).

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

- (1) A "Participant Statement for Period Ended 9/30/94," issued to the applicant by Vie De France Savings Plan and Trust, identifying the applicant's hire date as December 11, 1984.
- (2) A "Participant Statement for Period Ended 3/31/94," issued to the applicant by Vie De France Corporation Savings Plan and Trust, identifying the applicant's hire date as December 11, 1984.
- (3) A "Statement of Account for the Period Ending December 31, 1990," issued to the applicant by Vie De France Corporation Savings Plan, identifying the applicant's hire date as December 11, 1984.
- (4) Copies of affidavits from [REDACTED] and [REDACTED]. The affidavits, which are all dated September 25, 1990, are virtually identical. Each of the affiants provides the addresses of the applicant's residences, lists the applicant's employment since his arrival in the United States, and expresses that the applicant is his/her friend.
- (5) A notarized letter dated September 5, 1990 from [REDACTED] who identified himself as the building manager at [REDACTED] [REDACTED] stating that the applicant had resided at that address since [REDACTED]

March 15, 1980.

- (6) A notarized letter from [REDACTED] dated August 28, 1990 stating that the applicant had been employed by that person from January 5, 1982 through June 1983.
- (7) An employment letter from Vie De France Restaurant dated August 19, 1990, indicating the applicant was employed with the company since June 16, 1983.
- (8) A copy of a savings account bank statement from McLachlen National Bank issued to the applicant on December 31, 1988.
- (9) Copies of pay stubs issued to the applicant by Vie De France Corporation, dated October 21, 1988, November 12, 1988 and December 9, 1988.
- (10) Copies of parts of the applicant's 1985-1988 Form 1040, U.S. Individual Income Tax Returns.
- (11) Copies of 1984, 1985 and 1987 Form W-2 Wage and Tax Statements issued to the applicant.
- (12) A copy of the applicant's American Security Bank card dated April 15, 1981.
- (13) A copy of an undated affidavit from [REDACTED] verifying the applicant's employment as a gardener from January 5, 1982 to June 1983.
- (14) Copies of three family photos with notes explaining when and where the photos were taken as well as identifying the individuals in the photos.
- (15) A 1987 Form 1099-INT interest statement issued to the applicant by the McLachlen National Bank.
- (16) A copy of a 1987 Form W-2 Wage and Tax Statement issued to the applicant's spouse by Red Coats, Inc.
- (17) A photocopy of an identification card issued to the applicant by the Kuwait Embassy, indicating that the applicant was employed as a gardener.

In rebuttal to the notice of intent to deny, the applicant resubmitted a copy of the bank card issued by American Security Bank and the identification card from the Kuwait Embassy. The applicant also provided the following evidence:

- (18) A letter from [REDACTED] dated March 10, 2003 stating that the applicant and his wife lived at [REDACTED] from February 1980 to 1984, and pointing out that they moved to Apartment [REDACTED] at the same address in 1984.
- (19) A letter dated March 7, 2003 from [REDACTED] identified as Customer Services Manager. According to Ms. [REDACTED] the applicant has had a relationship with Bank of America since April 15, 1981 when the bank was known as American Security Bank.

The applicant's son, [REDACTED] and wife [REDACTED] have also applied for permanent residence under the LIFE Act. [REDACTED] presented evidence to establish that he attended school in Washington, D.C. from March 1980 to June 1989. This office has ruled that, under the preponderance of evidence standard, Jaime and Rosa provided sufficient evidence of their having resided in the United States during the requisite period.

According to the director, the applicant has not established that he was ever physically present in the United States prior to January 1, 1982. However, the director conceded that the applicant's family established that they were in the United States in an unlawful status on May 23, 1980. Unlike the vast majority of legalization applicants in the original legalization program and now in the LIFE program, the applicant's family has provided proof of their presence in the United States well before 1982. The applicant, who also claims to have first entered the United States in 1980, has provided some evidence of his own presence in the United States before January 1, 1982; the bank card issued on April 15, 1981, and other documentation indicating his employment with the Kuwait Embassy from March 3, 1980. Thus, a determination of whether he thereafter resided continuously in the United States can at least commence with the inference that he was in the United States with his family in 1980. There is no indication in the record that the director checked Citizenship and Immigration Services' (CIS) computer records and verified that the applicant made subsequent documented departures and reentries to the United States. The applicant apparently admitted at his interview to one departure and reentry into the United States without inspection. The director did not ascertain that the absence was long enough to be disqualifying.

The director asserted that in order to meet the standard of proof, the applicant must provide "credible, official documentation" that proves the applicant's eligibility apart from unsupported affidavits. According to the director, in the absence of supporting documentary evidence, affidavits are completely self-serving and lack credibility and objectivity. This finding is at odds with *Matter of E--M--*, *supra*. In that matter, the alien provided proof of entry and affidavits; no contemporaneous documentation relating to residence was provided.

It is noted that [REDACTED] one of the affiants listed above, formally petitioned the U.S. Immigration and Naturalization Service for the applicant's spouse's services in 1986-87. The documents submitted in that petition process showed that the spouse lived in Washington D.C. at that time. This supports the premise that Ms. Soderberg knew the applicant's family before they ever applied for class membership in CSS/LULAC in 1990 and long before the applicant filed this LIFE application in 2001. In the absence of evidence to the contrary, [REDACTED] affidavits would seem credible.

The director stated that the applicant's record lacks government-related documentation, as well as other supporting documentary evidence. An applicant is not required to provide government-related evidence of residence. Still, the W-2 forms, while not issued by the government, constitute a report by an employer to the government and are therefore government-related. Moreover, counsel is correct in stating that it is quite plausible that the applicant is unable to provide official documents, i.e. a copy of a lease, because he did not save such documents from over 20 years ago. Furthermore, as an illegal immigrant, the applicant may have not had a lease.

It is noted that the letter from Vie De France Restaurant indicates a different hire date from what appears on the participant statements of the Vie De France Corporation Savings Plan. No explanation was provided, although the director did not request one. There may have been a

rehiring, or a change from part-time to full-time status. At any rate, the applicant has provided other evidence for the years in question.

The director stated that the applicant only provided a letter as evidence of his Bank of America account. The applicant also furnished the bank card dated April 15, 1981. The director correctly noted that one does not have to be in the United States to maintain a bank account in this country. Nevertheless, proof of the existence of accounts, viewed in conjunction with other evidence, may help lead to an inference that a person was residing in the United States. The evidence in this type of proceeding must be viewed collectively, not in isolation, in order that an overall inference may be made.

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. The director did not establish that the information in the affidavits was inconsistent with the claims made on the application, or that it was false information. Affidavits in certain cases can logically meet the preponderance of evidence standard. 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 applicant's inability to submit additional contemporaneous documentation of residence is not found unduly implausible, considering all factors. The documents that have been furnished, including affidavits submitted by persons who are willing to testify in this matter, 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 making this finding we do not agree with counsel's criticism of the director's approach. The director made some valid observations. We simply find that under the "preponderance of evidence" standard, which is a lower standard than the "beyond reasonable doubt" and the "clear and convincing" standards, the applicant has provided sufficient credible evidence.

The director has noted that the applicant has met the requirements of section 312 of the Immigration and Nationality Act relating to knowledge and understanding of the history and government of the United States. *See* 8 C.F.R. 245a.3(b)(4). This matter will be remanded in order that the director ascertain whether the applicant is eligible in all other respects and whether the validity of the fingerprint checks and record checks has expired. The director shall complete the adjudication and render a new decision which, if adverse, shall be certified to this office.

**ORDER:** This matter is remanded for further action and consideration pursuant to the above.