



U.S. Citizenship
and Immigration
Services

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LR

FILE: [REDACTED] Office: Los Angeles

Date: JUN 21 2004

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).

ON BEHALF OF APPLICANT: Self-represented

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.

A handwritten signature in black ink, appearing to read "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 District Director, Los Angeles, 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.

On appeal, the applicant indicates that, due to his undocumented immigration status, he was paid by his employers in cash only and is, therefore, unable to submit employment evidence such as check stubs, earnings statements, W-2 tax forms or Social Security records. Nevertheless, the applicant asserts that such documentary evidence as he has managed to provide in support of his application should serve to establish his claim to continuous unlawful residence in the U.S. during the period in question.

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:

- An affidavit dated June 6, 2001 from [REDACTED] who attested to the applicant having resided in the U.S. since 1980. The affiant bases his knowledge on the fact that he and the applicant have resided together and were co-workers for many years;
- An affidavit dated June 7, 2001 from [REDACTED], who attested to the applicant having resided in the U.S. since 1979. The affiant bases his knowledge on the fact that he and the applicant had been former neighbors in their native country of Mexico and continued their acquaintanceship after both had departed for the U.S.;
- An affidavit dated June 7, 2001 from [REDACTED] who attested to the applicant having resided in the U.S. since 1977. The affiant bases his knowledge on the fact that the applicant resided at his house for approximately six months after having arrived in the U.S.;

- An affidavit dated June 19, 1990 from [REDACTED] attesting to the applicant having resided in the U.S. since September 1986. The affiant bases her knowledge on the applicant having resided at her domicile and having assisted in the payment of utilities and related household expenses;
- An affidavit dated June 21, 1990 from [REDACTED], attesting to the applicant having resided in Los Angeles, California since May 1981. The affiant bases his knowledge on the applicant having been a member of his religious organization and on the applicant having assisted him in his gardening job from May 1981 to August 1983;
- An affidavit dated June 20, 1990 from [REDACTED] attesting to the applicant having resided in Los Angeles, California since February 1980. The affiant bases his knowledge on the applicant having lived with him from February 1980 to September 1983;
- An OSC (Order to Show Cause) dated January 4, 1979, issued to the applicant by the U.S. Immigration and Naturalization Service or INS (now, Citizenship and Immigration Services) regarding the applicant having entered the U.S. without inspection at the [REDACTED] California, port of entry on November 14, 1977. An examination of the record discloses that the applicant was ordered deported to Mexico on January 9, 1979 and was subsequently deported on January 12, 1979;
- A photocopy of a 1987 W-2 Wage and Tax Statement from Bomatic, Inc., Ontario, California, made out to the applicant;
- Photocopies of envelopes carrying 1987 postmark dates indicating the applicant's name and return address; and
- A corroborative affidavit from [REDACTED], attesting to the applicant having been out of the country from May 14, 1987 to June 27, 1987 [According to Section 1104(c)(2)(C), an alien must establish continuously physical presence in the United States during the period beginning on November 6, 1986, and ending on May 4, 1988, except in the case of brief, casual, and innocent absences from the United States. In the present case, there is no indication the district director found the applicant to be ineligible due to his failure to maintain continuous physical presence during this period].

The applicant, on appeal, asserts that, as a result of his undocumented immigration status, his employers paid him in cash only and that he is, therefore, unable to submit employment evidence such as check stubs, earnings statements, W-2 tax forms or Social Security records. Under these circumstances, the applicant's inability to submit additional contemporaneous documentation of residence is not found unduly implausible. 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 instance, the applicant submitted at least seven affidavits attesting to his residence in the U.S. during the period in question. The director has not established that the information in the affidavits was inconsistent with the claims made on the application, or that it was false information. Furthermore, affidavits in certain cases can

effectively 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 documents that have been furnished, including affidavits submitted by persons many of whom 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.

It should also be noted that, unlike the vast majority of legalization applicants in the original legalization program and now in the LIFE program, the applicant has provided official government proof of entry into the United States well before 1982. Along with evidence in support of his claim to continuous residence, the applicant provides a photocopy an OSC or Order to Show Cause [cited above] issued to the applicant by INS on January 4, 1979 in conjunction with an apprehension for having entered the U.S. without inspection. Thus, a determination of whether the applicant resided in the United States since prior to January 1, 1982 must at least commence with the knowledge that he was definitely physically present in this country in early 1979.

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.