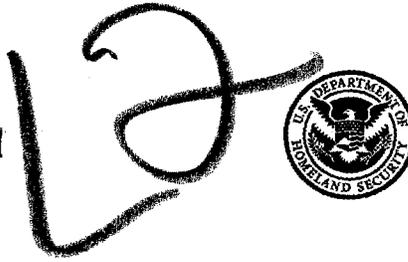


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Washington, DC 20536

**identifying data deleted to  
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**U.S. Citizenship  
and Immigration  
Services**



FILE: [Redacted]

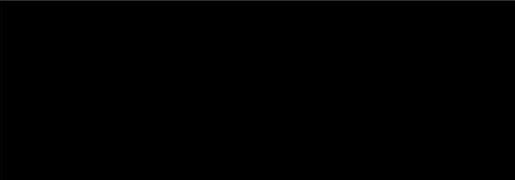
Office: BALTIMORE

Date: **MAR 22 2004**

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:



**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the Baltimore office. 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. Wieman".

Robert P. Wieman, 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 (AAO) on appeal. The case will be remanded for further action and consideration.

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, counsel states that the applicant has provided evidence of his continuous residence for the qualifying years and that the applicant should be granted resident status.

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).

The record contains sufficient contemporaneous evidence to support the applicant's claim of continuous unlawful residence in the United States from 1986 to May 4, 1988. In an attempt to establish continuous unlawful residence from before January 1, 1982 through the end of 1985, the applicant furnished the following evidence with both his legalization application and LIFE Act application:

- A photocopy of Texas Department of Health immunization records reflecting that his son received various vaccinations on January 17, 1985, March 26, 1985, May 24, 1985, November 5, 1985, and February 14, 1986;
- A photocopy of a State of Texas Certificate of Birth reflecting his son's birth in El Paso, Texas on October 30, 1984;
- Original receipts dated June 9, 1984, that reflect two separate payments totaling \$190.00 made by the applicant to [REDACTED];
- An original customer copy of a retail installment contract dated May 17, 1981, reflecting the applicant's purchase of a Kirby vacuum cleaner and subsequent terms of payment;
- An affidavit signed by [REDACTED], who stated that he was a farm labor contractor who employed the applicant as a field laborer from 1981 to 1983;

- An affidavit signed by [REDACTED] who stated that he has known the applicant from March 1981 to November 15, 1990, the date the affidavit was executed, because they were members of the same church;
- An affidavit signed by [REDACTED] who stated that he has known the applicant from February 1981 to November 7, 1990, the date the affidavit was executed, because they were members of the same church;
- An affidavit signed by [REDACTED] who stated that he has known the applicant from December 1980 to June 3, 1991, the date the affidavit was executed, because they lived together at an address in El Paso, Texas from December 1980 to January 1984.

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.

While the director correctly pointed out that the applicant's record lacks government-related documentation, the director acknowledged that he had provided other contemporaneous supporting documentary evidence as listed above. However, the director seemingly disregarded this evidence by stating that the applicant had failed to submit "...substantial credible evidence demonstrating that you were actually present in the United States...." Furthermore, counsel is also correct in stating that it is quite plausible that the applicant is unable to provide additional contemporaneous documents, i.e. a copy of a lease, because such documents would have to have been saved and then retained for more than 20 years. Furthermore, as an illegal immigrant, the applicant may not have had opportunities to obtain official contemporaneous documentation.

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 the AAO finds they are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The director must ascertain whether the applicant is eligible for permanent residence in all other respects, such as an understanding of English and knowledge of history and government, or whether she is exempt from such requirements 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:** The case is remanded for appropriate action and decision consistent with the foregoing.