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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services



FILE: [REDACTED]

Office: LOS ANGELES, CALIFORNIA

Date:  
NOV 17 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: 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.

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 of an inconsistent affidavit provided by [REDACTED] in which he states that he knew that the applicant entered the United States on October 25, 1981, but has been an acquaintance of the applicant since November 1981. In addition the District Director states that during an April 7, 2003, interview the applicant stated that he entered the United States in November 1981.

A review of the applicant's file does not reveal any notes taken during the April 7, 2003, interview and therefore there is not evidence to substantiate the District Director's statement.

On appeal, the applicant states that he has known [REDACTED] since October 1981 and that the individual who prepared the affidavit made a mistake typing November 1981 instead of October 1981. In addition the applicant states that he has provided affidavits from at least five persons who certify that he has resided in the United States since October 1981. Furthermore he submits a new affidavit from an individual who attests that the applicant has been in the United States since October 1981.

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 (5<sup>th</sup> ed. 1979).

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:

- A Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act, which was signed by the applicant on August 17, 1990;
- Affidavits from two brothers who state that the applicant entered the United States on October 25, 1981;
- An affidavit from an individual who attests to having known the applicant since December 1981 and that the applicant worked for him from July 1982 until September 1985 doing landscaping;

- An affidavit from an individual who attests to having known and having been close friends with the applicant since October 1981;
- An affidavit from the manager of the apartment building where the applicant resided after his arrival in the United States in October 1981; and
- An affidavit from the owner of [REDACTED] landscape attesting that the applicant worked there as a gardener's assistant from December 19, 1981, to December 15, 1985.

In this instance, the applicant has submitted numerous 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. On appeal the applicant reiterates his claim to have entered the United States on October 25, 1981. The District Director's decision is based on a single affidavit dated January 22, 1995, in which an individual states that he has been affiliated with the applicant since November 1981 instead of October 25, 1981.

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. For this reason the AAO finds that the inconsistency in one affidavit to be minor since it does not affect the applicant's eligibility for adjustment of status under the LIFE Act as the applicant entered the United States before January 1, 1982. In addition, while the record indicates that the applicant did say that he initially entered in November 1981, the AAO finds that the difference between October 25, 1981 and November 1981 is not so great that a statement more than 20 years later should be considered adverse evidence. The documents that have been furnished 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.

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.