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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC AFFAIRS



FILE: [Redacted]

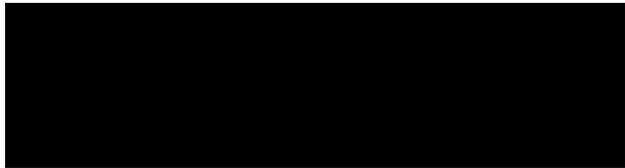
Office: Dallas

Date: OCT

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:



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, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. The district director further determined that the applicant failed to establish that he satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act. Therefore, the district director concluded the applicant was ineligible for permanent resident status under the LIFE Act and denied the application.

On appeal, the counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the U.S. from prior to January 1, 1982 through May 4, 1988. Counsel contends that the applicant is attempting to satisfy the basis citizenship skills requirement.

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).

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).

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 (INA) on November 12, 1991. With the Form I-687 application, the applicant included the following documents in support of his claim of continuous residence in the United States since prior to January 1, 1982:

- An affidavit of residence signed by [REDACTED] who provided his address and stated that he met the applicant through a relative and had personal knowledge that he resided in this country in Houston, Texas from 1980 to November 1, 1991, the date the document was executed;
- An affidavit of residence signed by [REDACTED] who provided his address and declared hat he met the applicant through a friend's relative and had personal knowledge that he resided in this country in Houston, Texas from 1980 to November 4, 1991, the date the document was executed;

- An affidavit of residence signed by [REDACTED] who provided his address and stated that he met the applicant through a friend and had personal knowledge that he resided in this country in Houston, Texas from 1984 to November 2, 1991, the date the document was executed;
- An affidavit of residence signed by [REDACTED] who provided his address and declared that he had personal knowledge that the applicant resided in this country in Houston, Texas from 1983 to November 2, 1991, the date the document was executed;
- An affidavit of residence signed by [REDACTED] who provided her address, [REDACTED] and stated that she had been the applicant's landlord when he resided at this address from May 1981 to February 1984;
- An affidavit of residence signed by [REDACTED] who provided his address, [REDACTED] and declared that he had been the applicant's landlord when he resided at this address from 1984 to 1989;
- An affidavit of residence signed by [REDACTED] who provided his address, [REDACTED] and indicated that he had been the applicant's landlord when he resided at this address from 1989 to November 2, 1991, the date the document was executed;
- An employment letter that is signed by [REDACTED] who stated that he employed the applicant from May 1981 to October 1984, but that no employment records were available because the applicant worked without a Social Security number; and,
- An employment letter that is signed by [REDACTED] who provided his business address and stated that he was a self-employed contractor who employed the applicant from January 1985 to November 1989, but that no employment records were available because the applicant was paid in cash.

On appeal, counsel asserts that the applicant does not possess contemporaneous evidence to support of his claim of residence in this country in the 1980's because of his status as an undocumented illegal alien. Under these circumstances, the applicant's inability to submit additional contemporaneous documentation of residence is not found unduly implausible.

In this instance, the applicant submitted at least seven affidavits and two employment letters to support his claim of residence in this country during the period in question. The district 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 and employment letters 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.

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. Therefore, the applicant is considered to have overcome this particular basis of the director's denial.

Under section 1104(c)(2)(E)(i) of the LIFE Act ("Basic Citizenship Skills"), an applicant for permanent resident status must demonstrate that he or she:

- (I) meets the requirements of section 312(a) of the Immigration and Nationality Act (8 U.S.C. 1423(a) (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States)); or
- (II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

Under section 1104(c)(2)(E)(ii) of the LIFE Act, the Attorney General may waive all or part of the above requirements for aliens who are at least 65 years of age or developmentally disabled.

The applicant, who is neither 65 years old nor developmentally disabled, does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act. Nor does he satisfy the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because he does not meet the requirements of section 312(a) of the Immigration and Nationality Act (INA). An applicant can demonstrate that he or she meets the requirements of section 312(a) by "[s]peaking and understanding English during the course of the interview for permanent resident status" and answering questions based on the subject matter of approved citizenship training materials, or "[b]y passing a standardized section 312 test . . . by the Legalization Assistance Board with the Educational Testing Service (ETS) or the California State Department of Education with the Comprehensive Adult Student Assessment System (CASAS)." 8 C.F.R. § 245a.3(b)(4)(iii)(A)(1) and (2).

Pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed twice in connection with his LIFE application, on September 30, 2002 and again on June 23, 2003. On both occasions, the applicant failed to demonstrate a minimal understanding of English and minimal knowledge of United States history and government. Furthermore, the applicant has not provided evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1).

The remaining question, therefore, is whether the applicant satisfies the alternative "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(II) of the LIFE Act. The "citizenship skills" requirement of section 1104(c)(2)(E)(i)(II) is defined by regulation in 8 C.F.R. § 245a.17(2) and (3). As specified therein, an applicant for LIFE Legalization must establish that:

He or she has a high school diploma or general education development diploma (GED) from a school in the United States. . . . 8 C.F.R. § 245a.17(2), or

He or she has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance. The course of study at such learning institution must be for a period of one academic year (or the equivalent thereof according to the standards of the learning

institution) and the curriculum must include at least 40 hours of instruction in English and United States history and government. . . . 8 C.F.R. § 245a.17(3).

The applicant in this case does not have a high school diploma or a GED from a United States school, and therefore does not satisfy the regulatory requirement of 8 C.F.R. § 245a.17(2).

On appeal, counsel contends that the applicant is attempting to attain the basic citizenship skills required by the LIFE Act. However, counsel fails to submit any independent, corroborative evidence to demonstrate that the applicant is currently "...satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States," as required under section 1104(c)(2)(E)(i)(II) of the LIFE Act

As previously discussed, the applicant failed to meet the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because at his two interviews he did not demonstrate a minimal understanding of English and a minimal knowledge of United States history and government.

Therefore, the applicant does not satisfy either alternative of the "basic citizenship skills" requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act. Accordingly, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.