



U.S. Citizenship
and Immigration
Services



FILE:



Office: Los Angeles

Date:

OCT 08 2004

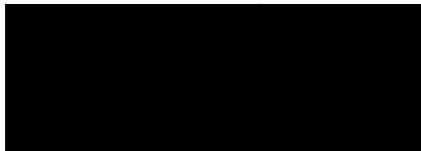
IN RE:

Applicant:



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

PUBLIC COPY

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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, counsel for the applicant asserts that the evidence provided by the applicant should serve to establish continuous residence in the U.S. from prior to January 1982 through May 4, 1988.

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).

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

- An affidavit from [REDACTED] who attests to the applicant having resided in the U.S. since March 1980. The affiant bases his knowledge on the fact that the applicant had performed gardening employment for the affiant and that the two continue to be friends;
- A letter from [REDACTED] Los Angeles, California, who asserts that the applicant was employed as a mechanic/helper from January 1983 to March 1985;
- A letter from [REDACTED] of St. Francis [REDACTED] Los Angeles, California, who asserts the applicant has been a regular member of that parish since 1982;
- A photocopy of a 1986 Form 1099-MISC Miscellaneous Income statement from Express Intermodal Transport, Long Beach, California, which is made out to the applicant;

- Photocopied earnings statements for the periods ending, respectively, August 15, 1985, December 29, 1985, and January 26, 1986, which are made out to the applicant [the identity of the employer cannot be determined];
- A barely legible photocopy of a 1986 Form W-2 Wage and Tax Statement from Pioneer Take-Out Corporation which is made out to the applicant;
- A photocopy of an automobile liability insurance certificate dated April 27, 1987, which is made out to the applicant from Transportation Insurance Services, Inc.;
- An affidavit from [REDACTED] attesting to the applicant having resided in California as follows: in Hollywood from 1980 to 1984; in Los Angeles from 1984 to August 1988; and in Inglewood since August 1988. The affiant bases her knowledge on the fact that she is the applicant's sister, and asserts the applicant first came to the U.S. in January 1981;
- An affidavit from [REDACTED] Aguilar, who attests to the applicant having resided in California as follows: in Hollywood from January 1981 to September 1984; in Los Angeles from September 1984 to March 1988, in Elgy, Illinois from March 1988 to December 1989; and in Inglewood, California since December 1989. The affiant bases his knowledge on having been acquainted with the applicant prior to the applicant's having departed his native Guatemala for the U.S. The affiant also indicates the applicant resided at his house from September 1985 to April 1986;
- A letter from [REDACTED] Safety Supervisor at Express Intermodal Transport, indicating the applicant was employed from December 1, 1985 to March 15, 1988 in the capacity of owner/operator/driver;
- A photocopied mail envelope addressed to the applicant in Hollywood, California, and bearing a postmark dated February 2, 1981;
- A photocopy of a postcard addressed to the applicant in Hollywood, California, and bearing a postmark dated March 5, 1981; and
- Photocopies of air mail envelopes addressed to the applicant in Hollywood, California, and bearing postmarks dated September 1, 1981, April 23, 1981, May 13, 1981, July 16, 1981, August 26, 1981, November 12, 1981.

In this instance, the applicant submitted at least six affidavits attesting to his residence and employment in the U.S. during the period in question. 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 and employment in the United States for the requisite period.

It should also be noted that, unlike many applicants for permanent residence under the LIFE program, the present applicant has actually provided considerable contemporaneous evidence of residence consisting of earnings

statement, employment records, W-2 forms, automobile insurance certificates, and postmarked envelopes addressed to the applicant which carry dates from the year 1981.

The affidavits provided by the applicant, along with considerable contemporaneous evidence, support 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.