



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]

Office: Sacramento

Date:

OCT 20 2000

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:

[Redacted]

REPUBLIC COPY

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

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prevent unauthorized
invasion of personal privacy

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Interim District Director, Sacramento, California, 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 applicant has already submitted credible evidence which establishes his having maintained continuous unlawful residence in the U.S. from prior to January 1, 1982 to May 4, 1988, and asks that the applicant's case be reopened and that his application be approved.

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:

- A completed Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act;
- A letter from [REDACTED] California, who asserts the applicant has been a member of his community center since December 1981;
- An affidavit from [REDACTED] labor contractor, attesting to having employed the applicant as a farm laborer picking fruit from May 1982 through July 1982;
- A photocopy of handwritten notations by [REDACTED] Stockton, California, on the occasion of an office visit by the applicant on December 29, 1981;
- A letter from [REDACTED] Lodi, California, asserting that the applicant has resided in Lodi, California, from February 1982 to June 1990;

- An affidavit from [signature illegible] indicating the applicant was employed as a night crew supervisor at the "Hamburger Stand," Stockton, California, from June 1982 to November 1988;
- A form letter from [redacted] manager, [redacted] Stockton, California, who states that he has known the applicant since 1982. The writer indicates he has become good friends with the applicant since he and the applicant worked at his brother's bakery;
- A form affidavit from [redacted], attesting to the applicant having worked as a merchandiser at the Sacramento Flea Market from 1987 to 1990; and
- A form affidavit from [redacted] attesting to the applicant having worked as a merchandiser at the Sacramento Flea Market from 1988 to 1990.

The applicant has submitted at least 8 separate affidavits and third-party statements attesting to his continuous residence and his employment in the U.S. during the period in question. Affidavits in certain cases can effectively meet the preponderance of evidence standard. The director has not established that any of the information in the affidavits and statements submitted by the applicant was false or inconsistent or at variance with the claims made by the applicant on the application. 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. In the present case, the documents that have been furnished, including affidavits and letters furnished by affiants, acquaintances and employers who have provided their current addresses and phone numbers and have indicated their willingness to come forward and testify in this matter if necessary, 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.