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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: Baltimore

Date: OCT 21 2004

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: 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, Baltimore, Maryland, 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, the applicant asserts that he has submitted sufficient evidence to support his claim of continuous residence in this country since prior to January 1, 1982. The applicant submits documentation in support of his appeal

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).

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 January 9, 1991. On the Form I-687 application, the applicant indicated that he first entered and began residing in this country in April 1981. At part #33 of the Form I-687 application where applicants were asked to list all residences on the United States from the date of their first entry, the applicant listed the following addresses:

- [REDACTED] from April 1981 to September 1984; and,
- [REDACTED] from September 1984 to November 7, 1990, the date the Form I-687 application was executed.

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

- An affidavit signed by [REDACTED] who provided his address and stated that he was acquainted with the applicant as a friend. [REDACTED] indicated that he had personal knowledge that the applicant resided in the United States since April 1981, and provided the applicant's addresses and corresponding periods of residence from such date to November 9, 1990, the date the document was executed;
- An affidavit signed by [REDACTED] who provided his address and stated that he was the applicant's cousin. [REDACTED] indicated that he had personal knowledge that the applicant resided in the United States since April 1981, and provided the applicant's addresses and corresponding periods of residence from such date to November 9, 1990, the date the document was executed;
- An employment letter containing the letterhead of the Sovran Bank branch at [REDACTED] in [REDACTED] that is signed by [REDACTED] assistant manager of this enterprise. [REDACTED] stated that the applicant had been employed as a porter by this bank branch from August 1981 to August 1987; and,
- An employment letter containing the letterhead and telephone number of Alexandria Yellow Cab at [REDACTED] that is signed by [REDACTED] supervisor, at this establishment. [REDACTED] stated that the applicant had been employed as a cleaner by this company from September 4, 1987 to November 11, 1990, the date the letter was executed August 1987.

The record shows that the applicant filed his LIFE Act application on January 25, 2002. In response to the notice of intent to deny subsequently issued on December 26, 2002, the applicant submitted a statement in which he reiterated his claim to have entered the United States in April 1981, and to have continuously resided in this country through May 4, 1988. The applicant indicated that he did not possess any additional evidence to support his claim of residence in this period because of his status as an illegal alien. The applicant submitted the following additional document in support his claim of residence:

- An affidavit signed by [REDACTED] who provided his address as well as telephone number and stated that he was the owner of an eight bedroom building located at [REDACTED] Washington D.C. [REDACTED] declared that he had rented a room at this location to an individual named [REDACTED] at some point in 1980. [REDACTED] stated that the applicant moved into that same room with [REDACTED] at some point in 1984.

However, in denying the application, the district director apparently misinterpreted the content of Dr. [REDACTED] affidavit and concluded that the testimony therein asserted that the applicant had rented the room at [REDACTED] rather than [REDACTED]. Clearly, this interpretation is in error as [REDACTED] testified that the applicant began residing at this address at some point in 1984. In addition, it must be noted that this erroneous interpretation appears to be the sole basis for the denial of the application.

On appeal, the applicant points out that the denial of his application is seemingly based upon this erroneous interpretation and provides documentation in attempt to clarify the situation.

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. In this case, the applicant has submitted at least three affidavits attesting to his residence in the United States, as well as two employment letters attesting to his employment during the requisite period. The director has not satisfactorily established that the information included in the affidavits was inconsistent with the claims made on the application, or that it was of a false or contradictory nature. The applicant asserted that he is unable to submit further evidence of residence because of his status an illegal alien during the period in question. Under these circumstances, the applicant's inability to submit additional affidavits or contemporaneous documentation of residence is not found unduly implausible.

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.

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.