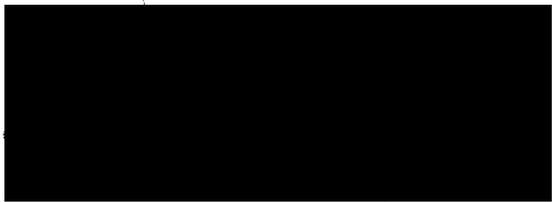




U.S. Citizenship  
and Immigration  
Services

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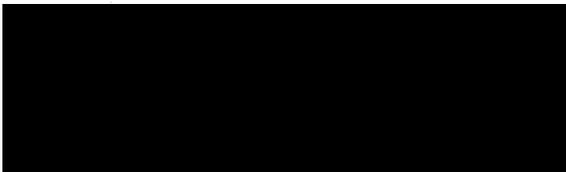
FILE: [REDACTED] Office: Houston

Date: SEP 02 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:



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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**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, Houston, Texas, 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 failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988.

On appeal, the applicant, through his attorney, submits a personal statement in which he asserts that any apparent inconsistencies noted at his adjustment interview are attributable to misunderstandings between the applicant and the interviewing officer arising from the applicant's imperfect command of English.

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 purportedly signed by the applicant on May 22, 1990;
- Photocopies of receipts from [REDACTED] which are dated July 1981, August 12, 1981 and August 26, 1981, July 6, 1982, respectively [the receipts do not indicate the identity of the purchaser];
- An affidavit from [REDACTED] Pastor of the [REDACTED] Seventh Day Adventist Church, Houston, Texas, attesting to the applicant having been a member of his congregation from May 1981 to February 1985, and from May 1986 to the present;
- Original air mail envelopes addressed to the applicant in Houston, Texas, with postmark dates of May 15, 1981, January 10, 1982, May 30, 1982, January 30, 1983, June 18, 1983, September 10, 1984, April 27, 1984, October 14, 1985, November 2, 1985, May 28, 1986, January 13, 1987, October 27, 1987, August

27, 1988 [it is noted that applicant's addresses during this time-span coincide with those indicated on his I-687 application];

- Photocopies of U.S. Postal Service customer receipts in the applicant's name and in the name of "Jorge F. Gomez" (the applicant has indicated on his Form I-687 application that he had previously used this assumed name in addition to his own. These postal receipts are dated February 19, 1987, September 17, 1985 and October 15, 1987;
- A photocopy of a customer copy of a 1983 receipt from [REDACTED] made out to the applicant;
- Photocopies of a registered mail receipts dated May 1986, February 19, 1987 and October 16, 1987, which are made out to the applicant or to assumed names used by the applicant;
- A photocopy of a Texas State Department of Highways Delinquent Transfer Penalty dated June 9, 1987, which is made out to the applicant;
- An employment letter from [REDACTED] Houston, Texas, indicating the applicant was employed in a maintenance capacity from April 11, 1981 to March 30, 1983;
- An employment affidavit from [REDACTED] Manager of Interior Plant Service, Highlands, Texas, indicating the applicant was employed in a maintenance capacity from April 1983 to February 1985;
- An employment letter from [REDACTED] of Holiday Inn Oceanside, Miami Beach, Florida, indicating the applicant was employed in the capacity of janitor from March 1985 to May 1986;
- An employment letter dated May 8, 1990 from [REDACTED] of Houston, [REDACTED] Texas, indicating the applicant has been employed as a shoe repairman since May 29, 1986;
- A photocopy of a Texas state automobile title assignment form in the name of the applicant, which is dated December 1, 1987;
- A photocopy of a Macy's receipt and warranty dated December 5, 1986, which is made out to the applicant; and
- Photocopied rent receipts from United Texas Real Estate Management Company, Houston, Texas dated April 4, 1988, July 6, 1988 and August 3, 1988, respectively, which are made out to the applicant.

In his notice of intent to deny, the district director cited an apparent discrepancy in the applicant's claim. Specifically, the applicant indicated at the time of his adjustment interview that he entered the U.S. without inspection in March 1981 and that his only departure from the U.S. consisted of a one-month visit to Honduras in 1987. Yet, the applicant's I-687 application indicates the applicant made an additional departure in 1985. The district director also noted that, according to Citizenship and Immigration Services (CIS) records, the applicant was residing in Honduras until February 1985.

The transcript of the applicant's adjustment interview indicates the applicant stated to CIS officers that he visited Honduras in 1987 in connection with his mother's illness. An examination of the information provided on the applicant's I-687 indicates that, in addition to his 1987 visit, he had also visited his mother two years earlier for approximately 33 days during February and March of 1985. According to the notice of intent, this points to an inconsistency in the applicant's claim, since the applicant failed to mention this additional 1985 departure during his interview. According to the district director, this discrepancy, along with the information regarding the applicant's alleged residence in Honduras until February 1985, gives rise to credibility issues which cast doubt on the applicant's claim.

It should be noted, however, that the applicant's statement at his interview regarding his 1987 departure is entirely congruent with the information included in his previously-completed I-687 application, which indicates that from June 20, 1987 to July 28, 1987, he visited his critically-ill mother in Honduras. On appeal, the applicant asserts that his alleged failure to mention his 1985 departure for Honduras at the time of his interview resulted from a miscommunication between the applicant and the examining officer. Moreover, since the applicant had already voluntarily included his 1985 visit on his I-687 application, he cannot be said to have deliberately *withheld* this information.

In addition, the district director's observation that CIS records show that the applicant resided in Honduras until February 1985, is not supported by the record. The applicant's file does include a photocopy of an I-94 Arrival/Departure Record from March 23 1988, indicating the applicant *last* entered the U.S. in March 1985. There is no additional information in the record, however, to indicate that the applicant was residing in Honduras until February 1985.

The applicant's attempt, on appeal, to account for what transpired during his adjustment interview and to resolve any inconsistencies regarding his brief departures from the U.S. is augmented by credible supporting evidence. Unlike many applicants for permanent residence under the LIFE program, the present applicant has actually provided extensive contemporaneous documentation of residence consisting of *original* air-mail envelopes which carry dates from 1981 through 1988. Other supporting contemporaneous evidence includes photocopied rent receipts, registered mail receipts and store receipts with dates covering the entire period in question.

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 applicant in this case has provided numerous affidavits covering his residence and employment from 1981 through 1990. The employment affidavits appear on official letterhead stationary and are furnished by employer/affiants who have provided their addresses and current phone numbers, and have indicated their willingness to come forward and testify in this matter if necessary. Such affidavits may be accorded substantial evidentiary weight and, along with the extensive contemporaneous evidence provided by the applicant, are sufficient to meet his burden of proof of residence in the United States for the requisite period.

The evidence 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.