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**U.S. Citizenship  
and Immigration  
Services**

22



FILE: [Redacted]

Office: Portland

Date: **SEP 09 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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

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 since before January 1, 1982 through May 4, 1988.

On appeal, the applicant's representative advances several explanations as to why only two affidavits were submitted as evidence in support of the applicant's claim of continuous residence in the United States since 1981.

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. 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).

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. *See Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989).

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).

In an attempt to establish continuous unlawful residence in the United States since 1981, as claimed on the applicant's Biographic Information Form G-325A, the applicant furnished two affidavits signed by Jose Alfredo Martinez and Esther Martinez, respectively. Both Mr. and Mrs. Martinez stated that the applicant had lived with them at their residence in Santa Ana, California, since his arrival in the United States in 1981 until 1993. Both affiants further declared that the applicant was eleven years of age when he arrived in 1981, and that he helped the household by doing chores around the house. No other evidence was provided.

Subsequently, the director sent the applicant a notice of intent to deny, which requested that he submit additional evidence of continuous unlawful residence in the United States from January 1, 1982 through May 4, 1988. In response, the applicant submitted a personal statement in which he declared that he and his family in Mexico had been very poor as he was growing up. The applicant contended that he resolved to go to the United States at a very early age, and that he accompanied a group of older boys on a commercial bus north and then crossed the border with them by foot in 1981, when he eleven years old. The applicant stated that after he arrived in this country he was able to find his aunt and uncle in Los Angeles, California, and then

resided with them for several years. The applicant asserted that he wanted to work rather than attend school, despite the fact that both his aunt and uncle desired that he attend school. The applicant declared that he did a lot of work with his uncle, taking care of people's yards and doing odd construction jobs. The applicant stated that he did not find regular employment and never had much money. The applicant asserted that his aunt and uncle never made him pay rent, but he paid for his own clothing and contributed what he could to pay for food. The applicant contended that he never had a serious illness or condition that would necessitate medical attention in the period that he resided with his aunt and uncle. The applicant indicated that he did not possess other evidence of his residence in this country because of the passage of time over more than twenty years.

Counsel essentially reiterates the same statements on appeal as made by the applicant in his response to the notice of intent to deny. Counsel also provides a copy of a memorandum issued on February 13, 1989, by the Director, Eastern Regional Processing Facility of the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS). This memorandum references evidentiary standards that have been previously enunciated in this decision and are the same standards utilized in the adjudication of the current application and appeal.

As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation. The extremely minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.2(12)(e).

The applicant in this case asserts that he has resided continuously in the United States since 1981 - a period in excess of 22 years. Nevertheless, he has only been able to provide two affidavits in support of his claim of residence. Furthermore, it must be noted that these two affidavits are from his aunt and uncle, family members, who must be viewed as having an interest in the outcome of proceedings concerning their nephew, rather than independent and disinterested parties. The applicant provided no explanation as to why he did not submit affidavits from individuals with little or no interest in these proceedings such as neighbors, friends and acquaintances, in addition to those affidavits from his family members.

In addition, the applicant stated that he did a lot of work with his uncle, taking care of people's yards and doing odd construction jobs in his response to the notice of intent to deny. However, in his previously referenced affidavit, the applicant's uncle, Jose Alfredo Martinez, made no mention that he ever worked with his nephew in any capacity. The applicant provided no explanation as to why his uncle omitted such pertinent and relevant information from his affidavit.

In *Matter of E-- M--*, *supra*, the applicant had established eligibility by submitting (1) the original copy of his Arrival-Departure Record (Form I-94), dated August 27, 1981; (2) his passport; (3) affidavits from third party individuals; and (4) an affidavit explaining why additional original documentation is unavailable. In this particular matter, the applicant has failed to provide any contemporaneous evidence to support his claim of residence during the requisite period. The applicant relies solely upon the affidavits of his aunt and uncle to support his claim of residence, rather than providing affidavits from independent and disinterested third party individuals. The applicant has, therefore, failed to submit sufficient evidence establishing that he resided in continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act.

Given the absence of any contemporaneous documentation, along with the applicant's reliance on two affidavits provided by family members, it is concluded that he has failed to establish continuous residence in the U.S. for the required period.

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