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U.S. Citizenship
and Immigration
Services

22

[Redacted]

FILE: [Redacted]

Office: LOS ANGELES

Date: [Redacted]

IN RE: Applicant: [Redacted]

APPLICATION: 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]

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. Any further inquiry must be made to that office.

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, Los Angeles, California, and is now before the Administrative Appeals Office 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 since before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the director failed to consider the applicant's rebuttal submitted in response to the Notice of Intent to Deny.

It is noted that the director, in denying the application, did not address the evidence furnished initially, and in response to the Notice of Intent to Deny, and did not set forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3. As such, the documentation throughout the application process will be considered on 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. 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 since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence throughout the application process:

- Affidavits from his brother, [REDACTED] who asserted that the applicant resided with him in Pasadena, California from 1981 through 1985.
- An affidavit from [REDACTED] distant cousin, who attested to the applicant's residence in Pasadena, California since 1981 [REDACTED] asserted that he has remained in contact with the applicant since that time.
- An affidavit notarized August 18, 1990 from his brother, [REDACTED] who asserted that the applicant has resided with him at [REDACTED] since October 1981.

- An employment letter dated August 16, 1990 from Clifford E. Mangang of Lafayette Cleaning Service in Pasadena, California who indicated that the applicant was employed part-time from November 28, 1981 through September 7, 1985.
- Employment letters dated November 7, 1987 and August 15, 1990 from [REDACTED], respectively of Sizzler [REDACTED] in Pasadena, California who indicated that the applicant has been employed since July 1985.
- Several pay stubs from Sizzler Family Steak House issued during 1985, 1986, 1987, and 1988.
- An affidavit from [REDACTED] who indicated that she has known the applicant since 1984 in the United States.
- An affidavit from [REDACTED] who indicated that he has known the applicant since 1983 and has entrusted him to do handy work around his home.
- An affidavit from [REDACTED] who indicated that he has known the applicant since 1982 and was a co-worker for approximately five years.
- An affidavit from [REDACTED] who indicated that he has known the applicant since 1981 and employed him to do various jobs around his home.
- An affidavit from [REDACTED] who indicated that the applicant resided with her in Pasadena, California when he arrived in 1981, and attested to his other residence in Pasadena through 1993.

The director, in her Notice of Intent to Deny, noted that affidavits from [REDACTED] contradicted each other as the affiants resided at two different locations. The director further noted that on January 24, 2002, at the time of his interview, the applicant asserted that [REDACTED] as deceased; however, the applicant provided another signed letter dated March 20, 2003 from [REDACTED]

The applicant, in response, asserted that he resided with his brother, [REDACTED] and his former sister-in-law, [REDACTED] when he arrived in the United States. The applicant provided a divorcee decree and statements from [REDACTED] reaffirming the applicant's residence with them from 1981 through 1985. As such, the address listed on [REDACTED] affidavit would not be the same as her former spouse.

The applicant also asserted that "at the time of my interview I forgot the name of who had pass away if [REDACTED] or his brother." The applicant stated that he went to see his former employer, [REDACTED] and that "he is able to clarify that his brother pass away." The applicant provided [REDACTED]'s work and home telephone numbers. On appeal, the applicant provided an additional letter dated May 23, 2004 from [REDACTED] along with [REDACTED] California driver license issued on September 12, 2003. [REDACTED] confirmed that his brother was deceased.

In this instance, the applicant submitted evidence, including contemporaneous documents, which tends to corroborate his claim of residence in the United States during the requisite period. The district director has not established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. 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 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 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.