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

PUBLIC COPY

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FILE:

[REDACTED]

Office: Los Angeles

Date: APR 18 2005

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]

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, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The district director denied the application because the evidence provided by the applicant had failed to establish that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. The denial was based on the district director's determination that the evidence provided by the applicant had failed to establish his continuous residence in the U.S. prior to 1984.

On appeal, counsel for the applicant reaffirms the applicant's claim to have resided in the U.S. since 1978, while asserting that the applicant has complied with the district director's requests by providing sufficient evidence to establish his continuous presence in the U.S. during the period from 1978 to 1989.

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 CIS 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence since prior to January 1, 1982, the applicant submits the following:

- A barely legible photocopy of an immunization record from the office of Dr. Edgardo Paredes, which lists vaccination dates for the applicant's daughter from 1985 through 1988;
- A receipt dated February 13, 1986 from H & R Block for income tax preparation services;
- Photocopies of 1985 AND 1987 W-2 Wage and Tax Statements from [redacted] [furniture] made out to [redacted];
- A photocopy of a California State driver's license dated October 23, 1985 in the name of the applicant;

- A notice dated July 22, 1985 from the Treasury Department of the Internal Revenue Service, made out to "[REDACTED]" which indicates that information provided regarding the individual's name and Social Security number failed to correlate with information contained in Social Security Administration (SSA) records;
- A photocopy of page 1 of a 1985 Form 1040A U.S. Individual Tax Return in the name of [REDACTED];
- Photocopied receipts dated January 11, 1985 and February 8, 1985 from Ambulatory Care Services, County of Los Angeles, in the name of the applicant's spouse;
- Photocopies of State of California Certificates of Live Birth, indicating the applicant's son and daughter were born in Los Angeles on March 18, 1985 and July 20, 1986, respectively.
- A marginally-legible photocopy of account statements dated November 10, 1982 and November 30, 1982, respectively, from Modern Finance, both of which are made out to the applicant;
- A marginally-legible photocopy of international money order transactions from Urgente Express, dating from February 18, 1980, October 3, 1980 and January 29, 1981, respectively, which appear to have been made out by the applicant to his spouse in Mexico;
- An affidavit from [REDACTED] who attests to the applicant having resided in the U.S. since March 1979;
- An affidavit from [REDACTED] who attests to having known the applicant since having met him in Los Angeles in January 1979;
- An affidavit from [REDACTED] who attests to the applicant having resided in the U.S. since 1978; and
- An letter from [REDACTED], Warehouse Manager of Roberts Rents Furniture, indicating the applicant was employed as a warehouse worker from August 24, 1984 through February 12, 1987.

The application was denied due to the district director's determination that the applicant had failed to provide sufficient information and corroborative evidence of residence prior to 1984. Upon examination, the applicant's Form I-687 application does not indicate the applicant's residences prior to June 1985 or his employment prior to August 24, 1984. In addition, as indicated above, the applicant has submitted documentation pertaining to [REDACTED]. However, at item 4 of the I-687, where an applicant is requested to indicate whether or nor he has ever used an assumed name, the applicant has responded in the negative. Moreover, the Social Security number listed at item 19 on the application form, [REDACTED] does not coincide with those indicated on the photocopied income tax and W-2 forms provided by the applicant. Reference is made to this inconsistency in the aforementioned I.R.S. communication of July 22, 1985, which indicates that the information provided regarding the individual [REDACTED] along with the accompanying Social Security number, failed to correlate with information contained in Social Security Administration (SSA) data files.

Pursuant to section 1104(c)(2)(B)(i) of the LIFE Act, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before

the date of the enactment of the LIFE Act shall apply to determine whether an alien maintained continuous unlawful residence in the United States. Therefore, where questions exist regarding an applicant's identity, reference must be made to the regulations at 8 C.F.R. § 245a.2(d)(2)(i), which specify that, in cases where an applicant claims to have met any of the eligibility criteria under an assumed name, he has the burden of proving that he was in fact the person who used that name. To meet the eligibility requirements, documentation must be submitted to prove the common identity, i.e. that the assumed name was in fact used by the applicant. In the present case, there is no documentation in the record to associate the applicant with the individual known as "[REDACTED]"

Nevertheless, even if we disregard and set aside the documentation in the name of "[REDACTED]" on this basis, the applicant has still managed to provide convincing and credible affidavits and statements attesting to his residence and employment in the U.S. during the period in question. The director has not established that the information contained in these affidavits was inconsistent with the claims made on the application, or that it was false information. Furthermore, affidavits in certain cases can effectively meet the preponderance of evidence standard. 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 by acquaintances as well as employers 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.

It should also be noted that, unlike many applicants for permanent residence under the LIFE program, the present applicant has provided substantial contemporaneous evidence of residence consisting of photocopied account statements, driver's licenses, tax preparation receipts, birth certificates, immunization records, and international money order transactions, all of which carry dates occurring within the period in question, i.e., from January 1, 1982 through May 4, 1988.

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.