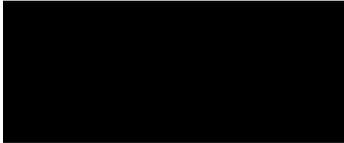




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Office: San Francisco

Date: APR 18 2005

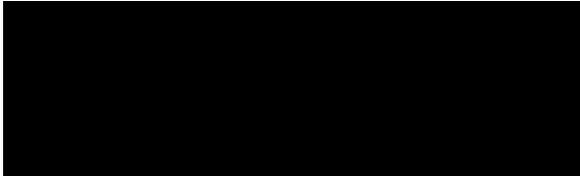
IN RE:

Applicant:



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

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, San Francisco, California, 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 continuous residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988.

On appeal, counsel for the applicant submits a subsequent brief in which she asserts that the applicant has met his burden of proof of having provided credible evidence establishing continuous unlawful residence in the U.S. since April 1981, and that, under the circumstances, the decision denying his application should be reversed.

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 evidence including six affidavits attesting to the applicant's residence in the U.S. during the period from 1981 through 1987; an automobile sales invoice dated November 7, 1986, which is made out to the applicant; and a State of Illinois Vehicle Title Certificate dated January 7, 1987. The statements of counsel on appeal regarding the amount and sufficiency of the applicant's evidence of residence have been considered.

In the notice of decision, the district director noted apparent inconsistencies which cast doubt on the credibility of the applicant's documentation and claim. Reference was made to an affidavit from [REDACTED] who attested to the applicant having resided in Tracy, California, from April 1981 to September 1981, and to having driven the applicant to his employment performing agricultural field work during the alfalfa season. According to the district director, this statement is at variance with an affidavit from [REDACTED] who stated that from 1982 to 1984, the applicant resided at [REDACTED] Los Angeles, California. In this connection, it was also noted that at item 33 of his I-687 application, in which an applicant is requested to list all of his residences since his date of initial entry, the applicant indicated that from April 1981 to November 1986, he resided at the aforementioned Los Angeles address at [REDACTED] [no mention is made of the applicant's residence in Tracy, California].

On appeal, counsel for the applicant addresses the apparent inconsistencies set forth in the notice of decision. According to counsel, on the occasion of his adjustment interview, the applicant testified that he had performed seasonal agricultural employment in Tracy, California during the alfalfa season. Counsel states that, due to the temporary, seasonal nature of this employment, the applicant decided to list only his permanent Los Angeles address on his documentation. In her explanation for the applicant having neglected to list his agricultural employment and Tracy, California residence from April 1981 to September 1981, counsel does not entirely resolve the questions raised in the district director's denial. Nevertheless, the matter of the applicant's residence and claimed agricultural employment during this five-month period in 1981 constitutes an inconsistency of a relatively minor nature, particularly since the applicant's residence in the Greater Los Angeles area during that period is presumably not at issue. It should also be noted that, contrary to the notice of decision, there does not appear to be any noticeable contradiction between the information included on the affidavit of [REDACTED] and that provided in the attestation from [REDACTED]. While the former document attested to residence from April 1981 to September 1981, the latter dealt with residence from 1982 to 1984.

It is concluded that, upon examination, the apparent inconsistencies cited in the notice of decision have either been adequately addressed and resolved by counsel or are not sufficient to call into question the veracity and reliability of the application and supporting evidence. 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 affidavits attesting to his continuous residence in the U.S. since 1981. Such affidavits, furnished by affiants willing to come forward and testify in this matter if necessary, may be accorded substantial evidentiary weight. These affidavits, in turn, are accompanied by contemporaneous evidence of residence in the vehicle title certificates and automobile sales receipts made out to the applicant during the period in question. The evidence provided by the applicant is sufficient to meet his burden of proof, by a preponderance of the evidence, of satisfying 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.