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U.S. Citizenship  
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FILE:



Office: Los Angeles

Date:

AUG 16 2005

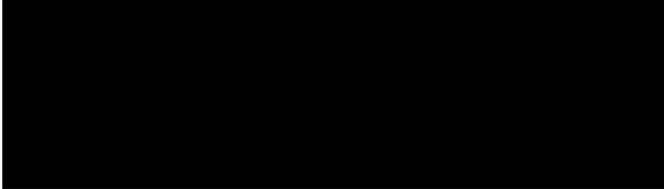
IN RE:

Applicant:



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:



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, 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 not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant submitted sufficient evidence to support his claim of continuous residence in this country since prior to January 1, 1982. Counsel contends that any conflicts in testimony regarding the date of applicant's initial entry into this country arose because he made multiple entries into the United States in 1981. Counsel indicates that the applicant's inability to obtain further documentation in support of his claim of residence is the result of the significant passage of time as such events occurred approximately twenty years ago.

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).

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).

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).

The applicant is a class member in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (INA) on or about May 26, 1994. In support of his claim of continuous residence in the United States since before January 1, 1982, the applicant submitted an affidavit of residence.

The record shows that the applicant submitted his Form I-485 LIFE Act application on January 18, 2001. The applicant subsequently provided five new affidavits in support of his claim of residence for the requisite period.

The record shows that the applicant was interviewed at the Los Angeles, California, District Office on June 11, 2003. The notes of the interviewing officers reflect that the applicant indicated that he first entered the United States in December 1981.

In the notice of intent to deny issued on June 7, 2004, the district director questioned the veracity of the applicant's claimed residence in the United States. Specifically, the district director stated that the applicant had provided conflicting testimony regarding the date he initially entered into this country. The district director also noted that two affidavits submitted by the applicant in support of his claim of residence contained conflicting testimony regarding the date of his first entry to the United States. The applicant was granted thirty days to respond to the notice.

Both in response to the notice of intent to deny and subsequently on appeal, counsel submits a statement in which he indicates that any conflict in testimony relating to the date he initially entered this country is the result of multiple entries he made into the United States in 1981. Counsel contends that the applicant has been unable to obtain further documentation in support of his claim of residence because of the significant passage of time as such events occurred approximately twenty years ago. The explanation put forth by counsel appears to reconcile any purported conflicts regarding the applicant's initial date of entry into this country. Furthermore, all testimony contained in the record is consistent in that it tends to establish that the applicant commenced his unlawful and continuous residence in this country prior to January 1, 1982. Consequently, the inconsistencies cited by the district director are minimal and cannot be considered as fatal to the applicant's claim of continuous residence in the United States from prior to January 1, 1982 to May 4, 1988.

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