

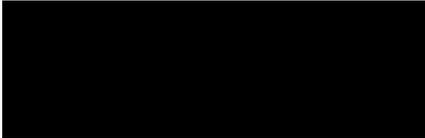
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: Los Angeles

Date:

AUG 22 2005

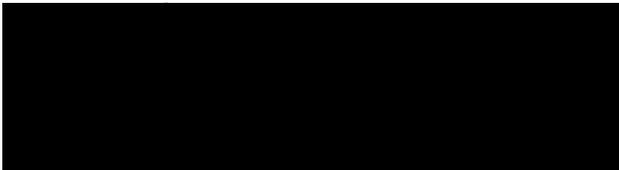
IN RE:

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, 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 failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988.

On appeal, the applicant asserts that he had submitted sufficient evidence to support his claim of continuous residence in this country from January 1, 1982 through May 4, 1988. The applicant provides photocopies of previously submitted documentation in support of his claim of residence.

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).

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 April 9, 1990. Subsequently, on April 22, 2002, the applicant submitted his Form I-485 LIFE Act application. In support of his claim of continuous residence in the United States since prior to January 1, 1982, the applicant submitted five affidavits of residence.

On June 9, 2004, the district director issued a notice of intent to deny to the applicant informing him of the Service's intent to deny her application because he failed to submit sufficient evidence of continuous unlawful residence in the United States from January 1, 1982 through May 4, 1988. Specifically, the district director observed that the applicant had submitted only third-party statements and affidavits that are not accompanied by other credible documentation. However, pursuant to *Matter of E--M--*, *supra*, affidavits in certain cases *can* effectively meet the preponderance of evidence standard, and the district director cannot simply refuse to consider such evidence merely because it is unaccompanied by other forms of documentation. Therefore, the district director's conclusions regarding the credibility of the applicant's claim of residence and the sufficiency of his supporting documentation as expressed in the notice of intent must be considered as an inadequate basis to deny the application.

Subsequently, on July 12, 2004, the district director issued a notice of denial to the applicant that stated that his application was also being denied because he had been convicted of a felony criminal offense involving narcotics on March 10, 1987 and, therefore was ineligible to adjust to permanent residence under the provisions of the LIFE Act pursuant to 8 C.F.R. § 245a.10. However, the pertinent regulation regarding the

effect of criminal convictions upon the eligibility of an applicant seeking to adjust to permanent resident status under the LIFE Act is contained at 8 C.F.R. § 245a.11. In addition, the record does not contain any evidence that would demonstrate that the applicant had been convicted of any criminal offense, much less a felony conviction for a crime involving narcotics. Consequently, the district director's conclusion regarding the applicant's criminal history and his eligibility to adjust to permanent residence under the provisions of the LIFE Act must be considered questionable as such conclusion is unsupported by the evidence contained in the record.

The statements of the applicant on appeal regarding the amount and sufficiency of his evidence of residence have been considered. 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 applicant in this case has provided five affidavits affirming his residence in this country during the period in question. Such documents may be accorded substantial evidentiary weight and are sufficient to meet his burden of proof of residence in the United States for the requisite period.

The evidence provided by the applicant establishes, by a preponderance of the evidence, that he 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.