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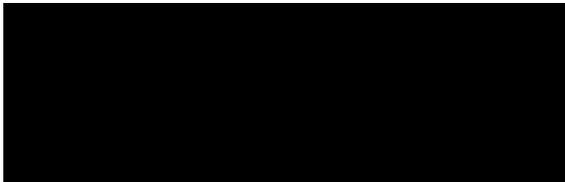
FILE:  Office: Houston

Date: AUG 23 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, Houston, Texas, 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 has submitted sufficient evidence to support his claim of continuous residence in this country since prior to January 1, 1982. Counsel contends that the purported discrepancy regarding the specific dates of the applicant's absences from the United States are the result of confusion and miscommunication.

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 January 7, 1991. At part #35 of the Form I-687 application where applicants were asked to list all absences from the United States beginning from January 1, 1982, the applicant listed three absences from this country when he traveled to Mexico in April of 1982 to get married, in August of 1987 to visit an ill family member, and then again in May of 1988 to visit an ill family member. In an attempt to establish continuous unlawful residence since before January 1, 1982, the applicant furnished six affidavits of residence, a co-worker affidavit, an employment letter, two original postmarked envelopes, and four photocopied postmarked envelopes.

A review of the record reveals that the applicant appeared for an interview relating to his application for temporary residence (Form I-687) at the Immigration and Naturalization Service's, or the Service's (now

Citizenship and Immigration Services, or CIS) Houston, Texas, Legalization Office on January 8, 1992. During the course of this interview, the applicant testified under oath that he had been absent from this country for no more than fifteen days on each occasion in 1982, April or May of 1987, and August of 1988. The record contains a "Narrative Record of Sworn Statement" that is signed by the applicant and contains statements corresponding to his testimony relating to his absences. However, it must be noted that although this document specifies that this interview was conducted in the Spanish language, the document is written entirely in English.

The record shows that the applicant subsequently submitted his Form I-485 LIFE Act application on August 10, 2001. The applicant appeared for the requisite interview relating to his LIFE Act application on June 22, 2004. The notes of the interviewing officer reflect that the applicant testified under oath that he had been absent from the United States in 1982, 1985, and 1987. The notes further reflect that the applicant indicated that his wife and children have never been to this country. Once again, it must be noted that although the notes specify that the interview was conducted in Spanish, such notes are written entirely in English.

In the notice of intent to deny issued on December 7, 2004, the district director questioned the veracity of the applicant's claimed residence entry into the United States because of conflicting testimony he provided at prior interviews relating to his absences from the United States. The district director also noted that the applicant's absences did not correspond to the dates that his children had been conceived in light of his admission that his wife had never been to this country. The applicant was granted thirty days to respond to the notice.

In response, counsel submitted a brief in which he contended that any purported discrepancy regarding the specific dates of the applicant's absences from the United States are the result of confusion and miscommunication. Counsel asserted that the situation was compounded by the fact that the applicant was suffering from a cold and heavily medicated at the time of his interview on June 22, 2004. In addition, counsel stated that the applicant never admitted that his wife had never been to the United States. Counsel declared that the applicant believed that the interviewing officer asked whether his wife had ever been here referring specifically to Houston, Texas, rather than the United States. Counsel indicated that the applicant's wife had in fact visited him here in the United States on several occasions during the period from January 1, 1982 to May 4, 1988. The applicant also submitted a statement in which he reiterated the issues raised by counsel. The applicant asserted that his wife had visited him several times in Laredo, Texas, since he began residing in this country. The applicant submitted five new affidavits in support of his claim of residence for the period in question.

The district director determined that the applicant had not sufficiently demonstrated that he had continuously resided in the United States in an unlawful status during the requisite period and denied the application on January 14, 2005.

On appeal, counsel asserts that the applicant has submitted sufficient evidence to support his claim of continuous residence in this country since prior to January 1, 1982. Counsel repeats the same arguments put forth in the prior response to the notice of intent to deny.

A review of the applicant's testimony throughout these proceedings demonstrates that he has consistently acknowledged being absent from this country for no more than two to three weeks on three occasions during the period from January 1, 1982 to May 4, 1988. While the applicant may have subsequently provided conflicting testimony regarding the exact dates of these absences, such testimony was provided to describe events that occurred approximately twenty years ago, a significant and considerable period of time. Although both of the applicant's interviews were conducted in his native language of Spanish, the record of such interviews is written entirely in English. In addition, the full context of answers provided by the applicant at his interview on June 22, 2004, cannot be ascertained because the interviewing officer's notes do not contain the specific questions that were posed to him. The explanations offered by counsel and the applicant both in response to the notice of intent and on appeal that any purported discrepancy regarding his absences from the United States is the result of a miscommunication are considered reasonable under these circumstances. These explanations appear to have credibly resolved the questions raised by the district director regarding the applicant's his absences from this country during the requisite period.

In this instance, the applicant submitted evidence, including affidavits and original 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 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.