

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, D.C. 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



LR

FILE: [REDACTED] Office: LOS ANGELE Date: AUG 24 2005

IN RE: Applicant: [REDACTED]

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:
[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. Any further inquiry must be made to that office.

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 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, the applicant asserts that he has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant asserted that the director failed to consider the additional documents and make a finding as to whether the evidence was credible and materially relevant.

It is noted that the director, in denying the application, did not address the evidence furnished initially, and in response to the Notice of Intent to Deny, and did not set forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3. As such, the documentation submitted throughout the application process will be considered on appeal.

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 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).

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence throughout the application process:

- An affidavit from [REDACTED] who indicated that he has known the applicant since 1981 and has remained close friends since that time.
- An affidavit from [REDACTED] a former room-mate, who indicated that he has known the applicant since March 1982. Mr. [REDACTED] asserted that he has remained friends with the applicant since that time.

- An affidavit from [REDACTED] who attested to the applicant's residence in Los Angeles, California from January 1981. Mr. [REDACTED] asserted that he was a co-worker of the applicant and has remain friends since that time.
- A statement dated April 23, 2004 from [REDACTED] who indicated that he has known the applicant since 1985 when the applicant began working at his place of residence.
- An affidavit from [REDACTED] who indicated that the applicant has been in his employ off and on since 1985 as a gardener.
- An affidavit from [REDACTED] who indicated that he has known the applicant since 1980 and has remained good friends with the applicant since that time.

The applicant also submitted a photocopied letter dated November 1, 1982 purportedly signed by [REDACTED] personnel analyst and [REDACTED] executive director of Neighborhood Adult Participation Project, Inc. who indicated that the applicant has been residing with his uncle at [REDACTED] California in 1980.

At the time of his interview on May 10, 1996, the applicant signed a sworn statement in his native language, admitting that his first entry into the United States was 1988.

The director determined that based on the applicant's sworn statement, the applicant was not eligible for the benefit being sought. The applicant, in response, asserted "I made a mistake in my interview I, stated that I, had first enter [sic] the U.S. in 1988 I, was confused with the question due to that I, was very nervous and I, though [sic] they said the last entry...."

Item 16 on the Form I-687 application requests the date an individual last came to the United States to which the applicant indicated the years "1981" and 1988. Likewise, the applicant indicated on the Form for Determination of Class Membership that he first entered the United States in "June 1981" and applied for legalization at the Los Angeles Legalization Office in "July 1987." As such, the applicant's rebuttal to his sworn statement has been considered and is plausible.

In this instance, the applicant submitted evidence, including 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 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.