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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: Baltimore Date: [illegible]

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. 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, Baltimore, Maryland, and then remanded by the Administration Appeals Office (AAO). The subsequent decision by the Director, National Benefits Center, to recommend that the application be denied again has been certified to the AAO. This certified decision will be reversed and the appeal will be sustained.

The district director initially denied the application based upon the determination that 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 from the initial denial, counsel asserted that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel contends that the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) failed to consider this evidence and erred in denying the application.

In the subsequent certified decision, the director again concluded that the evidence provided by the applicant failed to establish that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

In response to the certified decision, counsel submits a brief in which he reiterates the applicant has submitted sufficient evidence to establish his continuous residence in the United States for the requisite period. Counsel contends that the applicant has attempted to obtain further documentation in support of his claim of residence but has been able to do so because of the significant passage of time and fact that he was an undocumented illegal alien during the period in question.

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. *See* § 1104(c)(2)(B) of the LIFE Act and 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).

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 March 13, 1990. The applicant subsequently submitted his Form I-485 LIFE Act application on March 25, 2002.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted photocopied correspondence, two photocopied postmarked envelopes, two affidavits, and an employment letter.

On October 16, 2002, the district director issued the initial notice of intent to deny to the applicant informing him of the Service's intent to deny his 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 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. Moreover, although the district director acknowledged that the applicant had submitted photocopies of contemporaneous documents to support his claim of residence, the district director failed to address such evidence in the notice. In addition, it must be noted that the applicant submitted two new affidavits of residence and a receipt in response to the notice.

The record shows that subsequent to AAO's remand of this case, the district director issued another notice of intent to deny to the applicant informing him of the CIS' intent to again deny his application on March 4, 2005. Specifically, the district director determined that the applicant had failed to submit sufficient evidence of continuous unlawful residence in the United States for the requisite period because he had provided affidavits that were not notarized and did not contain telephone numbers to contact the affiants. The director further questioned the credibility of the postmarked envelopes and receipt because the applicant submitted only photocopies without providing the original envelopes. However, each and every affidavit and employment letter provided by the applicant contains an address to contact the individual who executed the letter or affidavit. Further, the issue of whether an affidavit is notarized has no bearing on the credibility of the testimony contained in the affidavit, as the notary attests only to the identity of the individual signing the notarized document. In addition, the applicant has provided the original postmarked envelopes and receipts, as well as two new affidavits in support of his claim of residence. 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 both of the notices of intent must be considered as an inadequate basis to deny the application.

The statements by counsel in response to the certified decision regarding the sufficiency of the applicant's evidence of residence, the significant passage of time, and the fact that the applicant was an undocumented illegal alien during the requisite period have been considered. In this instance, the applicant submitted evidence, including affidavits, letters, 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 contained in the applicant's supporting 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 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 certified decision to deny the application will be reversed and the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The certified decision to deny the application is reversed and the appeal is sustained.