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**U.S. Citizenship
and Immigration
Services**



L2

FILE:



Office: DENVER

Date: DEC 15 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. 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, Denver, Colorado, 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, counsel asserts 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 provides additional evidence in support of the 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 employment letter from [REDACTED] of Classic Deluxe Food Service in North Hollywood, California who indicated that the applicant was in his employ from March 1981 to April 1985. Mr. [REDACTED] asserted that the applicant worked as a washer, loader of trucks, cleaning machinery and catering trucks.
- A letter dated July 25, 1990 from Reverend [REDACTED] of Our Lady Queen of Angels Church in Los Angeles, California who indicated that the applicant has been a member of its parish since 1981 and attested to the applicant's residence at [REDACTED] Apt [REDACTED], North Hollywood, California.
- Several receipts for registered mail postmarked January 13, 1986, June 12, 1986, February 18, 1987, and April 20, 1987.

- Five envelopes postmarked November 16, 1981, June 14, 1982, December 9, 1982, April 23, 1984 and October 12, 1984 to the applicant's address at [REDACTED] Hollywood, California.
- An affidavit notarized August 25, 1990 from [REDACTED] who attested to the applicant's residence in Los Angeles, California from February 1981 to November 1984. Mr. [REDACTED] asserted that the applicant resided at his home at [REDACTED] Hollywood, California during that period of time.
- An affidavit notarized May 24, 2004 from [REDACTED] who attested to the applicant's residences in Hollywood, California from 1981 to 1984 and in Vail, Colorado since 1984. Mr. [REDACTED] asserted that he has remained in contact with the applicant since that time.
- Earnings statements dated February 5, 1986, April 20, 1986 and May 20, 1986 from [REDACTED] Restaurant.
- Earnings statements dated March 28, 1986 and April 11, 1986 from Sandstone Creek Club in Vail, Colorado.
- A declaration dated April 27, 2002 from [REDACTED] who indicated that he has been acquainted with the applicant for 16 years.
- A Social Security Statement dated April 12, 2002 reflecting earnings from 1985 through 1987.
- A letter dated September 9, 1991 from [REDACTED] Director of Human Resources at The Westin Resort in Vail, Colorado who indicated that the applicant has been in its employ since June 1986.
- A declaration dated March 13, 2002 from [REDACTED] who indicated that he has been acquainted with the applicant for 16 years. Mr. [REDACTED] asserted he worked with the applicant at The Westin Resort in Vail, Colorado from 1986 through the mid 1990s.
- A letter dated February 21, 2002 from [REDACTED] guest services manager of Vail Cascade Hotel & Club in Vail, Colorado who indicated that the applicant was been employed at the resort for 15 years.
- An affidavit notarized July 19, 1990 from [REDACTED] who attested to the applicant's residence at [REDACTED] Minturn, Colorado since May 1986.
- A letter dated March 26, 2003 from [REDACTED] principal of [REDACTED] in Gardena, California who indicated that he met the applicant in 1982. Mr. [REDACTED] asserted that he maintained a business relationship with the applicant for a couple of years until he moved out of state.

- A statement from [REDACTED] who indicated that he met the applicant in 1981 and attested to the applicant's residence in Hollywood, California until 1985.
- A statement from [REDACTED] who attested to the applicant's residence in Hollywood, California from July 1981 to February 1985.
- A statement from [REDACTED] who indicated that he met the applicant in November 1981 and remained in contact with the applicant until 1984.

The director, in his Notice of Intent to Deny issued on July 17, 2003 indicated that the applicant had informed the interviewing officer that the employment letter from [REDACTED] was fraudulent. However, neither the interviewing officer's notes nor a sworn statement by the applicant is contained in the record to corroborate the director's finding.

The applicant submitted undated employment letters from [REDACTED] chef-owner of Moroccan Restaurant and [REDACTED] of [REDACTED] Italian Restaurant both located in Vail, Colorado. The letters, however, have little evidentiary weight or probative value as the affiants did not include the applicant's dates of employment.

The applicant also submitted two affidavits from [REDACTED]. In his initial affidavit, Mr. [REDACTED] indicated that the applicant was employed from May 1985 to December 1985 and his duties consisted of "running the kitchen and he supervised up to five workers." In his subsequent affidavit dated May 25, 2004, Mr. [REDACTED] attested to the applicant's employment as a housekeeper from February 1987 through December 1988. As conflicting statements have been provided, it is reasonable to expect an explanation from the affiant in order to resolve the contradictions. However, no statement from Mr. [REDACTED] has been submitted to resolve his contradicting affidavits. As such, Mr. [REDACTED] affidavits have no probative value or evidentiary weight.

Nevertheless, the applicant submitted other 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.