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U.S. Citizenship
and Immigration
Services

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FILE:



Office: SACRAMENTO

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, 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, 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 states that any discrepancy in the previously submitted documents is the result of negligence by those who prepared them (notaries, immigration consultants, etc.) 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).

At the time of his initial interview on August 27, 2003, the record only contained a California identification card issued on February 24, 1987. As such, a Request for Evidence was issued, which advised the applicant to submit evidence establishing his continuous unlawful presence since before January 1, 1982 through May 4, 1988, and of his continuous physical presence from November 6, 1986 to May 4, 1988 in the United States. The applicant, however, failed to respond to the notice.

In a notice issued on February 19, 2004, the applicant was advised of his failure to respond to the above notice and of the director's intent to deny the application. The applicant was granted 30 days in which to submit a rebuttal to this notice. In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided: 1) an affidavit from [REDACTED], a brother, who indicated that the applicant resided with him from 1983 to [REDACTED] Santa Ana, California; 2) an affidavit from [REDACTED] who indicated that the applicant rented a room from her at [REDACTED] Long Beach, California from February 1, 1981 through March 15, 1983; and 3) a statement from a representative of the California Department of Motor Vehicles indicating that the applicant's identification number was first assigned between November 16, 1986 and January 1, 1987.

In a Notice to Intent to Deny issued on June 8, 2004, the director informed the applicant of inconsistencies between the affidavits submitted in response to the February 19, 2004 notice and his Form I-687 application. Specifically, the applicant claimed on his Form I-687 application to have resided at [REDACTED] Santa Ana, California from March 1981 to August 1986, and at [REDACTED], Santa Ana from August 1986 to February 1990. The applicant was advised that the affidavits from [REDACTED] and his brother were not deemed credible. The director further informed the applicant that his California identification card only served to establish his presence in the United States from November 6, 1986 to January 1, 1987.

The applicant, in response, reaffirmed his residence with his brother and [REDACTED] and stated, "I got confuse with the dates and address that I gave my brother [REDACTED] and [REDACTED]." The applicant indicated that at the time his filed his Form I-687 application, he could not remember [REDACTED] address and, therefore, he only included his brother's address. The applicant asserted that his brother's address was his mailing address while he was residing with [REDACTED]. The applicant stated that he resided with [REDACTED] Street from August 1986 to February 1990. The applicant provided an amended statement from [REDACTED] indicating that the applicant resided with him from March 1983 to August 1986 at [REDACTED] further indicated that he did not "quite remember the address and dates that we had lived together; therefore I put the address my brother gave my with out even checking if it was the correct one, the same happened with the date." The applicant also provided an amended affidavit from [REDACTED] indicating that the applicant rented a room from her from March 1981 to March 1983. [REDACTED] asserted, "I had written the wrong dates because I could not remember."

On appeal, the applicant provides:

1. An affidavit from [REDACTED] who indicated that he did not remember the exact date the applicant resided at his rental property, [REDACTED], but "it was in the 1980's and that he stayed there for about 4 years."
2. An additional affidavit from [REDACTED] who reaffirmed the applicant's residence at her parent's home, [REDACTED], Long Beach, California beginning in 1981. [REDACTED] asserted, "I do not remember exactly when he moved out, but I do remember that he was still living with us when I had my son on January 1, 1983."
3. A declaration from [REDACTED] who reaffirmed the applicant's residence and presence in the United States during the requisite period.

The applicant provides a declaration in which he describes his residences and employments since his arrival in the United States in 1981. The applicant asserts that he has no evidence of his employment during the 1980s because each time he moved he would throw the documentation away.

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. It is noted that in response to the notice issued on February 19, 2004, the applicant submitted a completed Form G-325A, which correctly listed the applicant's addresses during the requisite period. The applicant has satisfactorily resolved any inconsistencies in his claim and documentation. 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.