

U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

[REDACTED]

22

FILE: [REDACTED] Office: Los Angeles Date: JAN 14 2005

IN RE: Applicant: [REDACTED]

PETITION: 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]

PUBLIC COPY

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

Robert P. Wiemann, Director
Administrative Appeals Office

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Interim District Director, Los Angeles, 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 submits a separate statement in which he asserts that the documentation submitted by the applicant meets his burden of proof of establishing continuous residence in the U.S. from prior to January 1, 1982 through May 4, 1988. Counsel further asserts that neither the district director's denial notice nor the notice of intent to deny provides an adequate explanation of exactly why the evidence submitted by the applicant was not considered sufficient to establish the applicant's eligibility for the benefit sought by a preponderance of the evidence.

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). Preponderance of the evidence has also been defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979).

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).

In an attempt to establish continuous unlawful residence since before January 1, 1982, as claimed, the applicant furnished the following evidence:

- Affidavits dated July 2, 2001 from [REDACTED]. The affiants, all of whom refer to themselves as American citizens and friends of the applicant, attest to the applicant having continuously resided in the U.S. since June 1981;
- An affidavit from Irene [REDACTED] who attests to the applicant having continuously resided in the U.S. since the summer of 1981;

- A second affidavit from [REDACTED] who attests to the applicant having resided in Studio City, California from June 1981 to April 1985; in Sun Valley, California from April 1985 to March 1990; and in Van Nuys, California since March 1990. The affiant bases his knowledge on having met the applicant in June 1981 at Studio City, California;
- A third affidavit from [REDACTED] who attests to the applicant having resided at [REDACTED] Studio City, California from June 1981 to April 1985. The affiant bases his knowledge on having been a former co-tenant of the applicant;
- A second affidavit from [REDACTED] who attests to the applicant having resided in Van Nuys, California since March 1990. The affiant bases his knowledge on being a co-tenant of the applicant;
- A third affidavit from [REDACTED] attesting to the applicant having departed the U.S. for India on July 2, 1987 and having returned to the U.S. on August 13, 1987;
- A second affidavit from [REDACTED] who attests to the applicant having resided in Sun Valley, California from April 1985 to March 1990. The affiant bases his knowledge on having been a former co-tenant of the applicant;
- A third affidavit from [REDACTED] attesting to the applicant having resided in Studio City, California, from June 1981 to April 1985; Sun Valley, California from April 1985 to March 1990; and Van Nuys, California since March 1990. The affiant indicates he and the applicant have been friends since they both resided in India;
- A photocopy of an employment affidavit from [REDACTED] A&B Ceramics, Sun Valley, California, who indicates the applicant had been employed as a caster from June 1981 to April 1986; and
- Two original postmark envelopes sent to the applicant (along with photocopies of these envelopes). One of the envelopes bears a postmark date of "August 6, 1985," while the other carries a date of "February 7, 1981."

The regulations at 8 C.F.R. § 245a.2(d) provide a list of documents that may establish residence and specify that "any other relevant document" may be submitted. In this instance, the applicant has submitted at least 13 separate affidavits attesting to his residence in the U.S. during the period in question [albeit six of these appear to be from the same affiants]. The applicant has also submitted contemporaneous evidence consisting of originals of two postmarked envelopes bearing 1981 and 1985 dates, respectively. In this case, the director has not established that the information in the affidavits was inconsistent with the claims made on the application, or that it was false information.

Furthermore, affidavits in certain cases can effectively meet the preponderance of evidence standard. 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, including affidavits submitted by persons many of whom are willing to testify in this matter, 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 evidence provided by the applicant supports, by a preponderance of the evidence, his claim to have satisfied 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.