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U.S. Citizenship
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JAN 27 2005

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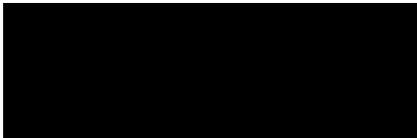
Office: Los Angeles

Date:

IN RE: Applicant: 

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:



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.

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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 Interim District Director, Houston, Texas, 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 failed to establish continuous residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988.

On appeal, counsel for the applicant asserts that the district office's denial decision was arbitrary and based on an incorrect assessment of the evidence and requests that the decision be withdrawn. Counsel further asserts that the applicant has submitted evidence meeting his burden of proof of establishing his continuous unlawful residence in the U.S. 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. 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:

- A marginally-legible photocopy of a stamped passport, along with a photocopy of a B-1/B-2 multiple-entry visa issued by the U.S. embassy at Caracas, Venezuela, which is dated March 11, 1980 and is valid until March 11, 1984;
- Photocopies of California driver's licenses in the applicant's name, issued April 11, 1980 and November 21, 1983, respectively ;
- Photocopied data from the applicant's account with Citizens Savings, showing an April 7, 1980 issuance date and indicating transaction entries thereafter from 1981 through April 13, 1983, when the account was closed;
- Photocopied data from the applicant's account with 1st Nationwide Savings, showing a June 30, 1983 issuance date and indicating transaction entries thereafter through September 4, 1987;
- A photocopy of a Citibank insured market account agreement dated March 21, 1982;

- Photocopies of completed Form 1040 Federal Individual Income Tax returns for the years 1982 through 1987;
- W-2 Wage and Tax Statements from Tonga-Lei Restaurant made out to the applicant for the years 1982 through 1987;
- A declaration from [REDACTED] the applicant's brother, attesting to the applicant's continuous residence in the U.S. from 1980 through 1988;
- A declaration from [REDACTED] an acquaintance of the applicant, who attests to the applicant's residence in the U.S. since 1980; and
- A declaration from [REDACTED] an acquaintance, who attests to the applicant having resided in the U.S. since 1980.

In the notice of intent to deny, the district director noted numerous apparent inconsistencies and discrepancies that, in her opinion, cast doubt on the credibility of the applicant's documentation and claim. It was determined that the photocopied passport submitted by the applicant did not "resemble a genuine issue as subjected to standard Service inspection points." However, as argued by counsel on appeal, the district director provides no further amplification or examples regarding in what manner the applicant's document is purportedly at variance with one that is genuine.

Another apparent discrepancy referenced in the notice of intent concerned the applicant's statement at his adjustment interview that he began work as a cook in April 1980. The district director observed that, on the applicant's Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (INA), he indicated that his first employment after his initial entry did not occur until January 1982, when he commenced work as a cook at Tonga-Lei Restaurant. Addressing this point in his rebuttal statement, the applicant denies that he began work as a cook on April 1980, indicating that April 1980 was the date of his initial entry into the U.S., and that his restaurant employment did not begin until the following year. The applicant attributes the district director's observation in this regard to an apparent miscommunication between himself and the interviewing officer.

The notice of intent also focuses on the applicant's statement at his interview that he was paid for his restaurant work in cash, and indicating that this statement appears to contradict the fact that the applicant also submitted W-2 forms from 1982 to 1987 from this restaurant. However, as argued by counsel on appeal, there does not appear to be a contradiction between the applicant's having been issued W-2 forms by his restaurant/employer while at the same time having been paid for his services in cash.

A further question referenced in the notice of intent involved the fact that the applicant's photocopied California driver's licenses indicate two addresses - [REDACTED] and [REDACTED] - which are not reflected at item 33 of the applicant's Form I-687 application, in which an applicant is requested to list his residences in the U.S. On appeal, counsel contends that the applicant had already explained to the examining officer at his interview that he retained a San Francisco mailing address which was separate and distinct from his address of residence. Counsel's statement is supported by the

declaration from [REDACTED] who stated that [REDACTED] San Francisco, was his place of residence and that he had granted permission to the applicant to use that as a separate mailing address.

Finally, the district director indicated in the intent notice that the applicant had not submitted official court dispositions regarding a prior arrest that had been indicated on an FBI Identification Record included in the applicant's file. The FBI record indicates that on September 11, 1972, the applicant had been charged with auto tampering and with possession of a vehicle with an altered identification number. Under section 1140(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. § 245a.11(d)(1), an alien who has been convicted of a felony or three or more misdemeanors in the United States is inadmissible and, therefore, ineligible for adjustment to permanent resident status.

On appeal, counsel states that the offense in question constituted only a misdemeanor and that the applicant had, in any case, made a good faith attempt to procure a court disposition. Counsel's statement regarding the applicant's attempt to procure a court disposition is supported by a letter from [REDACTED] Deputy Clerk of the U.S. District Court, San Francisco, California. In his communication, Mr. [REDACTED] specified that a search conducted by his office of criminal records going back to 1965 failed to disclose any record of conviction pertaining to the applicant.

It is concluded that, upon examination, the apparent inconsistencies and discrepancies cited in the notice of intent between the information provided at the applicant's interview and that included in his supporting documentation have either been adequately addressed and resolved by counsel and the applicant or are not sufficient to call into question the veracity and reliability of the application and supporting evidence. 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 applicant in this case has provided several affidavits attesting to his continuous residence in the U.S. since 1980. Such affidavits, furnished by affiants willing to come forward and testify in this matter if necessary, may be accorded substantial evidentiary weight. These affidavits, in turn, are accompanied by extensive contemporaneous evidence of residence in the form of income tax statements, W-2 forms, savings account statements, driver's licenses and photocopies of passports and visas. The evidence provided by the applicant is sufficient to meet his burden of proof, by a preponderance of the evidence, of satisfying 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.