

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

U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

22

FILE:



Office: CHERRY HILL, NJ

Date: JAN 31 2005

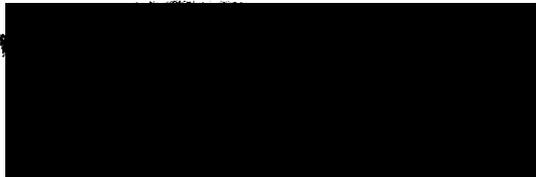
IN RE:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, Cherry Hill, NJ, 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 asserts that denial of the application because the applicant submitted affidavits alone should not stand without a clear indication from CIS as to why the affidavits submitted are not believable. Counsel further asserts that the denial does not claim that the documentation submitted was false or counterfeit, only that it was insufficient. Counsel reaffirms the applicant's eligibility for permanent residence under the LIFE Act.

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:

- A Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (INA), which was signed by the applicant on March 16, 1990. The applicant indicated in item 35 that he made a trip to Egypt on January 14, 1988 and returned to the U. S. on February 20, 1988;
- An employment letter from [REDACTED] dated February 28, 1990, who asserts that the applicant was a general laborer at First Orange Brokerage from May 1980 to December 1987;
- An affidavit from [REDACTED] dated March 1990, who asserts that he has known the applicant since 1983;
- An affidavit from [REDACTED] dated March 7, 1990, who asserts that he and the applicant resided together from May 1980 to "D" 1984;

- An affidavit from [REDACTED] dated March 7, 1990, who asserts that he and the applicant resided together from "J 1985-Ma 1990;"
- An affidavit from [REDACTED] dated March 16, 1990, who asserts that he has personal knowledge that the applicant has resided in New Jersey from May 1980 to March 1990;
- An employment affidavit from [REDACTED] dated March 16, 1990, who asserts that the applicant worked for Awad Realty Company from January 1985 to December 1987;
- An employment affidavit from [REDACTED] dated April 20, 1990, who asserts that the applicant has been employed as a general laborer at Universal Trade & Commercial, Inc. from March 1988 to the present;
- An employment letter from [REDACTED] dated August 3, 2001, who asserts that the applicant has worked for United Cab, Inc. from March 1993 to the current time;
- An affidavit from the Consulate General of Egypt, New York, New York, dated April 20, 1990, asserting that the applicant's lost passport was replaced on February 15, 1990 and that the applicant has visited the consulate yearly since May 17, 1980. The affidavit is signed by the Consul General; and
- A letter from [REDACTED] M.D., dated October 20, 2003, who states that he saw the applicant on December 21, 1981, May 12, 1982, and November 12, 2003".

In this instance, the applicant submitted ten affidavits attesting to his residence and employment in the U.S. during the period in question. Affidavits in certain cases can effectively meet the preponderance of evidence standard. The director has not established that any of the information in the affidavits and statements submitted by the applicant was false or inconsistent or at variance with the claims made by the applicant on the application. 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, 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 third-party affidavits provided by the applicant, accompanied by contemporaneous evidence, support 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.