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

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FILE:



Office: LOS ANGELES

Date: JUL 06 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 provides copies of previously submitted documentation in support of the appeal.

It is noted that the director, in denying the application, did not address the evidence furnished initially, and in response to the Notice of Intent to Deny, and did not set forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3. As such, the documentation submitted throughout the application process will be considered on 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 affidavit from [REDACTED] owner of Evans Company who indicated that the applicant was in his employ in tree service work from November 1, 1981 to May 1, 1986.
- An affidavit notarized March 12, 1992 from [REDACTED] who attested to the applicant's residence in Riverside, California from October 1981 to December 1985.

- An affidavit from [REDACTED] co-owner of a farming business who indicated that the applicant was employed as a farm laborer from May 5, 1986 to November 29, 1986 and from March 1, 1987 to November 30, 1987 in the rural areas of Cambria, California.
- Several envelopes postmarked in 1985 and 1986 from and to the applicant's address in Cambria, California.
- Several envelopes postmarked in 1988 to the applicant's address in La Puente, California.
- A California identification card issued on January 22, 1987.

The director issued a Notice of Intent to Deny dated June 3, 2004, informing the applicant that "your application, I-687 indicates that your employment with Evan Company commenced on 11/1/81 and you he did not entered the US until December 1981." A thorough review of the Form I-687 application, however, does not support the director's finding of an initial entry of December 1981. The director further informed the applicant that said there were inconsistencies between his oral testimonies and his applications regarding the dates of his departures from the United States.

The applicant, in response, reasserted the veracity of his claim to have entered the United States in October 1981. The applicant asserted that director's statement that his Form I-687 application listed December 1981 as his first entry was inaccurate. The applicant stated that at the time of his interview on May 27, 2004:

I misstated my date of entry to the interviewing officer. I incorrectly stated my date of entry to be December 1981. I could not recall the exact month I entered the United States and due to being nervous and very stressed, I provided the only date I could remember I should have clarified that I could not recall but I felt that I had to say something in response to the officer's questions.

The applicant further stated that he only departed the United States on two occasions; December 15, 1985 and September 20, 1987 as indicated on his Form I-687 application, and at the time of his 1992 and 2004 interviews, he provided inaccurate information regarding his first entry and departures from the United States.

Counsel asserts that it is reasonable that the applicant made an honest mistake due to the passage of time between his first entry into the United States and his interviews. Counsel further asserts that at the time of his entry into the United States, the applicant was 15 years of age not 11 or 12 years old as indicated by the director in his Notice of Intent to Deny.

It must be noted that according to the interviewing officer's notes on June 5, 2003, the applicant was not placed under oath and did not understand English efficiently to answer questions. As such, the applicant's statement made at the time of his interview lacks evidentiary weight.

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. 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.