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U.S. Citizenship
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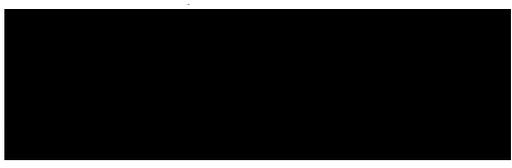
Office: San Francisco

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.

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, San Francisco, California, 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 submits a brief in which he attempts to address and account for the purported inconsistencies in the applicant's claim and documentation which were referenced by the district director in his notice of intent to deny.

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: two affidavits attesting to the applicant having resided in South Lake Tahoe, California, from September 1980 through November 1980; three affidavits attesting to the applicant having resided in the U.S. since 1981; and photocopies of page 1 of the applicant's California State Form 540A Resident Personal Income Tax for the years 1985 through 1989.

In his notice of denial, the district director made reference to an inconsistency in the applicant's documentation regarding the date he first entered the U.S. It was noted that the supporting affidavits from [redacted] and [redacted] indicated the affiants shared an apartment in South Lake Tahoe, California from September 1980 through February 1981, during which time the applicant was employed at Lakeside Inn Casino Resort in Stateline, Nevada. However, other affiants indicate their awareness that the applicant entered the U.S. in September 1981. Further, on the applicant's Form for Determination of Class Membership in *CSS v. Meese*, completed April 9, 1990 and accompanied his I-687 application, the applicant indicated that he first entered the U.S. on September 13, 1981. It was also noted

that, on the applicant's Biographic Information Form G-325A, there was no mention of the applicant having resided at South Lake Tahoe from 1980 to 1981. According to the denial notice, these inconsistencies as to date of first entry call into question the credibility of the applicant's entire residence claim.

On appeal, counsel for the applicant takes issue with the conclusions set forth in the district director's notice of denial. In his brief, counsel acknowledges the discrepancy in the applicant's entry dates, but asserts that the discrepancy is accounted for by the fact that the applicant made a simple mistake in stating on his determination form that he first entered the U.S. in September 1981. Counsel also calls attention to the applicant's Declaration Under Penalty of Perjury of December 13, 2003, in which the applicant specified he first entered the U.S. on or about September 15, 1980, where he resided at the [REDACTED] apartments in South Lake Tahoe, California, with his two brothers and several others while employed at the Lakeside Inn. According to the applicant, this arrangement lasted until February 1981, when he was apprehended by the Immigration and Naturalization Service or INS and was voluntarily returned to his native Mexico. The applicant further asserts that, following his voluntary departure to Mexico, he subsequently reentered the U.S. during 1981, and has continuously resided in the U.S. since then. In addition, counsel refers to the fact that, while the applicant's Form G-325A does not list the Lake Tahoe address in the residence section on page 1, the accompanying addendum to the G-325A *does* specify that the applicant worked as a dishwasher at Lakeside Inn, South Lake Tahoe, from September 1980 to February 1981.

Counsel's response to the decision to denial appears to have resolved most of the questions raised by the district director regarding the applicant's date of first entry into the U.S. Moreover, as noted by counsel, whether the applicant first entered in September 1980 or September 1981, the applicant would in either case have indicated residence in the U.S. prior to January 1, 1982. Additionally, if the applicant did in fact subsequently *re-enter* the U.S. in 1981, as he has claimed, those affidavits from affiants attesting to the applicant's having resided in the U.S. since September 1981 may not necessarily be at variance with others indicating his having first entered in 1980.

It is concluded that any perceived inconsistencies and discrepancies cited in the notice of intent have either been adequately addressed and resolved by counsel and the applicant or are not material to the applicant's eligibility or 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 affidavits and photocopied tax information attesting to his residence and employment during the period in question which tends to corroborate his claim of residence in the United States during the requisite period. Such affidavits, furnished by affiants willing to come forward and testify in this matter if necessary, may be accorded substantial evidentiary weight and, along with the contemporaneous evidence provided by the applicant, are sufficient to meet his burden of proof of residence in the United States for the requisite period.

The evidence provided by the applicant establishes, 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.