

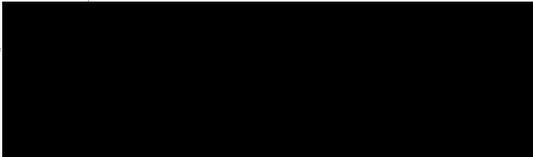
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FILE:

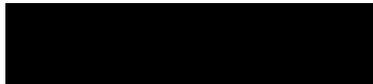


Office: Seattle

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IN RE:

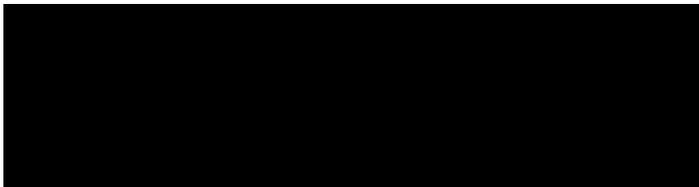
Applicant:



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. 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, Seattle, Washington, 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 residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant had submitted sufficient evidence to support his claim of continuous residence in this country from January 1, 1982 through May 4, 1988. Counsel contends that the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) has failed to address all the evidence of residence submitted by the applicant and made no attempt to verify information contained in the supporting documents.

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).

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).

The applicant is a class member in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (INA) on October 19, 1990. In support of his claim of continuous residence in the United States since prior to January 1, 1982, the applicant submitted two affidavits of residence and a separate affidavit referencing a trip made by the applicant to Canada in 1987.

The record shows that the applicant submitted his LIFE Act application on November 14, 2002. The record further shows that the Service issued a Form I-72, Request for Additional Evidence, to the applicant on April 24, 2003, that requested that he provide additional documents to support his claim of residence in the United States during the requisite period. In response, the applicant submitted three original receipts, four original postmarked envelopes, and a letter alluding to his attendance at a temple.

On August 6, 2003, the district director issued a notice of intent to deny to the applicant informing him of the Service's intent to deny his application because he failed to submit sufficient evidence of continuous unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988. Specifically, the district director observed that the applicant had submitted only third-party affidavits, receipts, and letters that were not verifiable and were not accompanied by other credible documentation. However, pursuant to *Matter of E-- M--*, *supra*, affidavits in certain cases *can* effectively meet the preponderance of evidence standard, and the

district director cannot refuse to consider such evidence because it is unaccompanied by other forms of documentation. The same reasoning applies to the receipts and letters submitted by the applicant. The district director must examine the probative value of all the evidence provided in light of the totality of the circumstances. The applicant was granted thirty days to respond to the notice and provide additional evidence in support of his claim of residence in the requisite period.

In response, counsel provided a statement in which he asserted that the applicant had submitted sufficient evidence to support his claim of continuous residence in this country for the period in question. Counsel noted that the applicant had attempted to obtain further supporting documentation but had failed to do so because of the significant passage of time and the fact that he was an undocumented illegal alien during the period in question. The applicant submitted two new affidavits of residence in support of his claim of residence in the United States from prior to January 1, 1982 to May 4, 1988.

The district director determined that the applicant had failed to establish his claim of residence for the requisite period and denied the application on December 3, 2003. In the notice of decision, the district director declared that the postmarked envelopes submitted by the applicant were not of probative value because the envelopes did not contain any indication of being processed by the United States Postal Service (U.S.P.S.). However, it is unlikely that such envelopes would contain any indication of having been processed by the U.S.P.S. as such envelopes had been mailed from India to the United States. The district director stated the two new affidavits provided by the applicant in response to the notice of intent to deny were not credible because these documents contained corrections made with white-out. However, only one of the affidavits contains such corrections and the credibility of a document is not necessarily diminished because it contains corrections made with white-out. While the district director indicated that the credibility of the affidavits had been further impaired because these documents contained a discrepancy regarding the applicant's address of residence from 1990 to 2000, the relevancy of events that occurred subsequent to the termination of period of unlawful residence in this country on May 4, 1988 is minimal in the current proceedings and not the focus of an examination of this applicant's claim of residence for the requisite period. Furthermore, the documentation submitted by the applicant in support of his claim of residence must be considered in light of his own testimony and a determination made based upon the totality of the circumstances. Such documentation cannot be dismissed because the record does not contain additional corroborative evidence.

The district director also noted that a Final Revocation of the applicant's class membership in the legalization class-action lawsuit, *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (CSS), had been previously issued by the Service on June 30, 1997. The applicant's class membership had been revoked because he had provided documentation notarized by an individual subsequently convicted of Conspiracy to Create and/or Supply Fraudulent Documents. Nevertheless, as the applicant had previously registered as a class member on October 19, 1990, the revocation of his class membership does *not* render him ineligible to file a subsequent application for adjustment to permanent resident status under the LIFE Act.

On appeal, counsel provides a brief in which he contends that the applicant had submitted sufficient evidence to support his claim of continuous residence in the United States for the requisite period. Counsel asserts that the district director erred in dismissing the probative value of the evidence of the applicant's residence in this

country that is contained in the record. Counsel declares that it is impossible for the applicant to obtain further supporting documentation because of the significant passage of time and the fact that he was an undocumented illegal alien during the period in question.

The statements of counsel on appeal regarding the amount and sufficiency of the applicant's evidence of residence, as well as the considerable passage of time and his status as undocumented illegal alien have been considered. The inconsistencies and discrepancies set forth in the notice of intent to deny and notice of decision have either been adequately addressed and resolved or are not sufficient to call into question the veracity and reliability of the application and supporting evidence. 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 applicant in this case has provided evidence, including affidavits and contemporaneous documents, which tend to corroborate his residence in this country during the period in question. Such documents may be accorded substantial evidentiary weight and 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 he 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.