

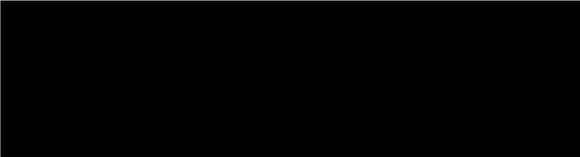
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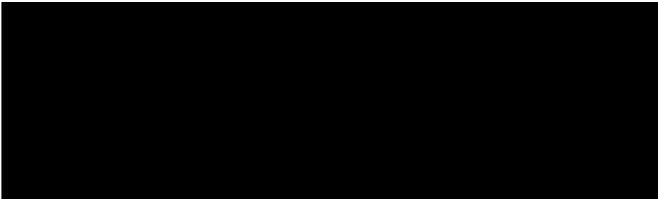
FILE: [Redacted] Office: Los Angeles

Date: JUN 10 2005

IN RE: Applicant: [Redacted]

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, Los Angeles, 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 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, the applicant asserts that he submitted sufficient evidence to support his claim of continuous residence in this country since prior to January 1, 1982. The applicant provides new documentation in support of his claim of continuous residence.

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).

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).

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 May 31, 1990. The record shows that the applicant submitted another separate Form I-687 application on October 16, 1990. In support of his claim of continuous residence in the United States since before January 1, 1982, the applicant submitted four affidavits of residence, photocopies of four postmarked envelopes, a State of California Identification Card, copies of Federal and State of California tax returns, tax documents, an original utility receipt, two original rent receipts, and two customer receipts for Travelers Express money orders.

The record shows that the applicant subsequently submitted his Form I-485 LIFE Act application on September 24, 2001. The applicant included copies of previously submitted documents, as well as the following new evidence in support of his claim of residence for the requisite period: a copy of a letter from the State of California Franchise Tax Board, an employment letter, a State of California Certificate of Live Birth for the

applicant's son, a letter from the Social Security Administration, and a Social Security Administration computer printout.

The record shows that the applicant was subsequently interviewed at the Los Angeles, California, District Office on December 12, 2002, and then again on October 7, 2003. The notes of the interviewing officers reflect that the applicant gave conflicting accounts of the manner in which he crossed the border and the date of his first entry into the United States during the course of his two interviews.

In the notice of intent to deny issued on January 21, 2004, the district director questioned the veracity of the applicant's claimed residence in the United States. Specifically, the district director cited the conflicting testimony provided by the applicant during his interviews regarding the manner and date he initially entered into this country. The district director also noted that addresses and periods of residence provided by the applicant himself in the two different Form I-687 applications did not match, and that such addresses conflicted with addresses listed on the postmarked envelopes, at least one affidavit, the State of California Identification Card, and various tax documents. The district director further determined that the applicant had provided conflicting information relating to his employment history on the two different Form I-687 applications. The applicant was granted thirty days to respond to the notice.

Both in response to the notice of intent to deny and subsequently on appeal, the applicant submits a statement in which he indicates that any conflict in his testimony at his interviews regarding the manner and date he initially entered this country was result of misstatements and miscommunication arising from his limited ability to speak and understand English. The applicant states that he had characterized his date of initial entry into the United States as both June and July of 1981 because he arrived in this country in late June, on or about June 23, 1981. The applicant declares that he moved to various addresses of residence with friends and family members in this country during the requisite period and that his period of residence at some of these addresses was for a short time. The applicant acknowledges that he also utilized the addresses of family members and friends as his mailing address to ensure reliable delivery of mail when he knew that his period of residence at a particular address would be of a short duration. The applicant asserts that the addresses listed in the two Form I-687 applications and supporting documents are a reflection of both his actual addresses of residence and mailing addresses during the period in question to the best of all parties recollection and memory considering the time that has passed. The applicant contends that further confusion arose because the landlord of one of the buildings in which he resided mistakenly indicated that the applicant had resided in an adjoining building with a different address that the same landlord also owned. In addition, he admits that he should have reviewed the Form I-687 application submitted on October 16, 1990 more carefully because it had been prepared by a notary and contained omissions and errors. The applicant reiterates his employment history and provides photocopies of maps from the Mapquest website in support of his statement. The applicant also submits a copy of a document relating to a workers' compensation claim he had filed in 1986 as new evidence to support his claim of residence in the United States for the requisite period.

Although the record is clear in demonstrating that the applicant provided contradictory testimony at his interviews, it must be noted that he is a Spanish-speaking native of El Salvador for whom English is a second language. In addition, the applicant's testimony was provided to describe events that occurred over twenty years

ago, a significant and considerable period of time. The applicant's statement that any purported discrepancy regarding his manner and date of initial entry in the United States was the result of miscommunication is considered reasonable under these circumstances and appears to have credibly resolved the questions raised by the district director regarding applicant's entry into this country prior to January 1, 1982. The explanations put forth by the applicant in his statement also appear to reconcile any purported conflicts in his addresses of residence and employment history in the requisite period as listed in his Form I-687 applications and supporting documents. Furthermore, all of the addresses listed as the applicant's residence in these documents are located in close proximity to one another in the same area of Los Angeles, California, and tend to demonstrate that he was residing in this country as of the date listed in each document. It must be further noted that the applicant has subsequently submitted additional new contemporaneous documents in support of his claim of residence both in response to the notice of intent to deny and on appeal. Consequently, the inconsistencies cited by the district director are minimal and cannot be considered as fatal to the applicant's claim of continuous residence in the United States from prior to January 1, 1982 to May 4, 1988.

In this instance, the applicant submitted evidence, including affidavits and contemporaneous documents, which tends to corroborate his claim of residence in the United States during the requisite period. The district director has not sufficiently 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.