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U.S. Citizenship
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Services

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LA

FILE:



Office: Sacramento

Date: JUN 10 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: Self-represented

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

On appeal, the applicant asserts that he has submitted sufficient evidence to support his claim of continuous residence in this country from January 1, 1982 through May 4, 1988. The applicant contends that the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) only made limited attempts to contact the affiants who had provided statements in support of his claim of residence. The applicant also provides an explanation as to why the individual who prepared his Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (INA), omitted pertinent biographic information relating to his addresses and employment during the requisite period.

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 period, 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 on or about August 15, 1990. In support of his claim of continuous residence in the United States since prior to January 1, 1982, the applicant submitted two affidavits. Subsequently, on June 11, 2002, the applicant submitted his LIFE Act application. With his LIFE Act application, the applicant included copies of previously submitted supporting documents, as well as six new affidavits regarding his residence, an original receipt, and an original postmarked envelope.

On March 16, 2004, 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 January 1, 1982 through May 4, 1988. Specifically, the district director observed that the applicant had submitted only third-party statements and affidavits that were not accompanied by other credible documentation. In addition, the district director noted that the applicant, when interviewed on October 6, 2003, and March 16, 2004 regarding when and where he entered the United States, had failed to provide credible evidence to demonstrate that he entered this country in November 1981 as claimed. 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. Furthermore, a review of the notes of the Service officer who conducted both of these interviews does not reveal any specific information provided by the applicant that would tend to contradict his claim of residence. Moreover, the district director failed to acknowledge that the applicant had submitted two original contemporaneous documents to support his claim of residence and to address such evidence in the notice. Therefore, the district director's conclusions regarding the credibility of the applicant's claim of residence and the sufficiency of his supporting documentation as expressed in the notice of intent must be considered as questionable, as such conclusions are unsupported by the evidence contained in the record.

In addition, the district director 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 March 3, 1998. 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 registered as a class member on August 15, 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. 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, the applicant submitted a statement in which he declared that it was extremely difficult to obtain evidence relating to events that occurred more than twenty years ago. The applicant contended that this problem was compounded by the fact that he was an undocumented illegal alien during his period of residence in this country from before January 1, 1982 to May 4, 1988. The applicant also asserted that any discrepancies in his addresses of residence for this period was the result of an attempt to simplify information and omissions by the individual who had prepared his original Form I-687 application.

The district director determined that the applicant had failed to establish his claim of residence for the requisite period and denied the application on May 26, 2004. In the notice of decision, the district director stated that a Service officer had attempted to verify information contained in the applicant's supporting documentation by contacting the affiants who had provided affidavits attesting to his United States residence. While the record contains a note that has been placed on an affidavit after an attempt had been made to contact the affiant listed therein, the skeletal and informal note does not support the conclusions and statements made in the notice of decision. This note is the only evidence contained in the record reflecting any verification attempts and appears to have been made sometime after the fact. As such, this note must be considered to be a second or third-hand recounting of the call. Moreover, the record contains no evidence to demonstrate that any attempts were made to contact the other affiants who submitted affidavits to support the applicant's claim of residence for the requisite period. In such cases where attempts are made to contact affiants by telephone, the record must at least contain a first-hand contemporaneous account by the Service employee who made the call in which he or she identifies himself or herself and provides very specific information as to whom he or she spoke to, what was said and when the call was made.

The statements of the applicant regarding the amount and sufficiency of his evidence of residence, the considerable passage of time, and the fact that he was an undocumented illegal alien during the period in question 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 by the applicant or are not 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 eight affidavits, an original receipt, and an original postmarked envelope affirming his residence in this country during the period in question. Such documents may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof regarding his residence in the United States for the requisite period.

The evidence provided by the applicant, which includes original contemporaneous documents, 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.