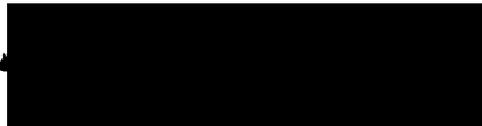


**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



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

PUBLIC COPY



22

FILE: [REDACTED] Office: HOUSTON Date: MAR 09 2008

IN RE: Applicant: [REDACTED]

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. 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, Houston, Texas, 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 since before January 1, 1982 through May 4, 1988.

On appeal, the applicant contends that during his interview, his interpreter never translated for him and that he provided another statement, which reflected all of his absences from the United States since arriving in January 1979.

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:

- A California Identification Card issued on July 11, 1979.
- Notarized affidavits dated October 5, 1990 from David Solorio Santos who attested to the applicant's residence in Houston, Texas since March 1981. Mr. [REDACTED] indicated that he and the applicant shared household expenses.
- A notarized affidavit dated October 5, 1990 from [REDACTED] who attested to the applicant's residence in Houston, Texas since October 1981.
- A notarized affidavit dated October 5, 1990 from [REDACTED] who attested to the applicant's residence in Houston, Texas since October 1981.
- Notarized affidavits dated October 5, 1990 from [REDACTED] who attested to the applicant's residence in Houston, Texas since March 1981. Mr. [REDACTED] indicated that the applicant resided with him.

- A notarized employment letter from [REDACTED], manager/banquet crew of Americana Hotel Inn in Houston, Texas who indicated that the applicant was employed as a waiter from March 11, 1981 through January 25, 1984.
- A notarized employment letter from [REDACTED] manager/banquet crew of Americana Hotel Inn in Houston, Texas who indicated that the applicant was employed as a waiter from February 2, 1984 through March 30, 1988.

At the time of his interview, the applicant, through an interpreter, stated in a sworn statement dated August 4, 2003, that his spouse, whom he married in August 1982 had never entered the United States; June 1998 was his only departure from the United States since entering in January 1979; he had 13 ½ years of education in Mexico; after college he was employed in a bank for one and a half years; and Café Express was his first job in the United States.

Due to the applicant's sworn statement, the director determined that the documentation submitted with his LIFE application was insufficient to establish unlawful continuous residence since before January 1, 1982 through May 4, 1988. The director issued a Notice of Intent to Deny dated October 21, 2003, informing the applicant that there were inconsistencies between his oral testimony, sworn statement and the documentation provided with his application namely, the date of his first entry, his employment history and his absences from the United States. The director determined that based on the number of years the applicant spent on his education coupled with the year and half employed at a bank, the applicant could not have entered the United States earlier than 1983.

The applicant, in response, asserted that although his interpreter accompanied him at his interview, "she never translate" as he was able to answer the questions in English. The applicant stated that he completed his education in June 1978 and was working at the bank while his attending high school. It has been confirmed that the applicant's education at "Centro de Education Bachillerato Tecnologico" is recognized as a high school and not a college in Mexico. Therefore, the applicant's entry into the United States in 1979 is plausible.

Regarding his employment at Café Express, the applicant stated that he thought the interviewing officer was requesting "the work that I was longer worked." Evidence in the record reflects several pay stubs from two restaurants (Jo Jo's Restaurants, Inc., and Antonio's Flying Pizza & Restaurant), which were issued to the applicant prior to his employment at Café Express. As such, the applicant's employment at Café Express was not his "first" employment in the United States.

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. Furthermore, affidavits in certain cases can effectively meet the preponderance of evidence standard. 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.

Regarding his absences from the United States, the applicant claimed that at the time of his interview he provided another statement that clarified his absences. The applicant provided a copy of this statement, which indicated that he departed the United States in August 1982, May 1984, December 1985, July 1996 and August 1998.

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.