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U.S. Citizenship  
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FILE:

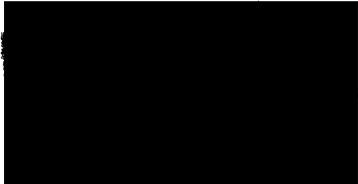
Office: Houston

Date:

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. The file has 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.

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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 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, counsel for the applicant submits a separate statement in which she asserts that the applicant has continuously resided in the U.S. since 1981. Counsel also submits a copy of interview notes made by an officer of the Citizenship and Immigration Services or CIS (formerly, the Immigration and Naturalization Service or INS) made on March 31, 1994 to explain and resolve inconsistencies cited by the director in his decision denying the application.

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. *See:* 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 pursuant to the regulations at 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 (5<sup>th</sup> 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. *See:* 8 C.F.R. § 245a.12(e).

To establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant furnished the following evidence:

- An affidavit from [REDACTED] who states that she personally knew that the applicant resided in Chicago, Illinois from May 1981 to September 1987.
- An affidavit from [REDACTED] who states that the applicant lived with him and his family in Chicago, Illinois from May 1981 until July 1986.
- An affidavit from [REDACTED] the owner of Guerrero Auto Repair in Chicago, Illinois indicating that the applicant was an apprentice at his shop from June 1981 to May 1983.
- A copy of the applicant’s Illinois Individual Income Tax Return for 1986.

- A receipt for registered mail PS Form 3806 showing that he listed [REDACTED] as his address in Chicago, Illinois on August 1, 1986.
- An affidavit dated "2<sup>nd</sup> day of October" from [REDACTED] stating that the applicant lived in her building in Chicago, Illinois from August 1986 to "Present."
- Copies of the applicant's U.S. Individual Income Tax Returns for 1986 and 1987.
- His Illinois driver's license issued on March 4, 1987.
- An affidavit from the Rev [REDACTED] Pastor of the Blessed Agnes Parish in Chicago, Illinois showing that the applicant registered as a member of that Parish on October 2, 1987.
- His bank statement from Civic Federal Savings Bank in Chicago, Illinois dated March 10, 1988.
- His pay stub from Olmarc Packaging Company in Franklin Park, Illinois for pay period ending April 3, 1988.
- Forms I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act signed by the applicant on May 29, 1991 and on October 29, 1993;

In his decision, the director noted what appeared to be an inconsistency regarding the applicant's date of entry into the United States. Specifically, on November 13, 2002 at his interview before an INS officer that he first entered the United States in March of 1982 through San Ysidro, California. The director found this to be inconsistent with the entry date of May 5, 1981 that was presented in his affidavits, his I-687 and his application for class membership. The director also found that the applicant's claimed entry at San Ysidro to be inconsistent with a claimed entry at San Diego, California.

It is noted that given the proximity of the Port of Entry at San Ysidro and the City of San Diego, persons who cross there often use the San Diego and San Ysidro city names interchangeably when describing where they entered the United States. Also, on appeal, counsel submitted a copy of interview notes made by a CIS officer on March 31, 1994 to explain and resolve inconsistencies cited by the director in his decision denying the application. The record contains a copy of the document forwarded by counsel. The record reflects that at that interview, the applicant claimed that he first entered to this country in May 1981. Given the evidence submitted for the record showing that the applicant was in the United States prior to March 1982 and the fact that the evidence supports his claim that he entered in 1981, it is determined that the applicant has overcome the objections of the director raised in his determination.

The director has not established that any of the information in the affidavits and statements submitted by the applicant was false or inconsistent or at variance with the claims made by the applicant on the application. 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 documentation provided by the applicant establishes, by a preponderance of the evidence, that he has satisfied 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 appeal will be sustained. The director shall continue the adjudication of the application for permanent resident status.

**ORDER:** The appeal is sustained.