

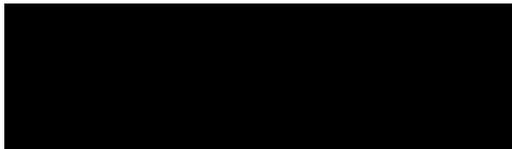
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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE:



Office: Los Angeles

Date: NOV 02 2005

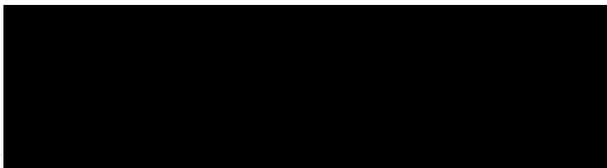
IN RE:

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:



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 established that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant has submitted sufficient documentation to establish continuous residence in this country for 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. See § 1104(c)(2)(B) of the LIFE Act and 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. 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 or about December 10, 1990. In support of his claim of continuous residence in the United States since prior to January 1, 1982, the applicant submitted Form W-2, Wage and Tax Statements, federal tax returns, an employee status notice, an employment letter, a California Driver License, two affidavits of residence, and photocopied pages from his passport.

The record shows that the applicant subsequently submitted his Form I-485 LIFE Act application to the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) on April 24, 2002. The applicant included copies of previously submitted documentation, as well as three new affidavits of residence.

On June 30, 2004, the district director issued a notice of intent to deny to the applicant informing him of the Service's intent to deny his LIFE Act application. Specifically, the district director stated that although the applicant had claimed entry into the United States before January 1, 1982, he had submitted little verifiable evidence to establish residence in this country prior to his entry with a visa in 1983. However, the determination that the applicant failed to provide verifiable evidence to support his claim of residence in the country from prior to January 1, 1982 to 1983 is erroneous. A review of the affidavits submitted in support of

the applicant's claim of residence for this period reveals that only one affiant failed to provide an address or phone number for contact and verification purposes. Furthermore, pursuant to *Matter of E--M--*, *supra*, affidavits in certain cases *can* effectively meet the preponderance of evidence standard, and the district director cannot simply refuse to consider such evidence merely because it is unaccompanied by other forms of documentation. 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. 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 to the notice of intent to deny, the applicant provided an additional affidavit of residence attesting to his residence in this country since 1981. The district director determined that the applicant had failed to establish his claim of residence for the requisite period and denied the application on July 29, 2004.

The statements of counsel on appeal regarding the amount and sufficiency of the applicant's evidence of residence as well as his inability to obtain further documentation in light of the significant passage of time have been considered. In this instance, the applicant submitted evidence, including affidavits, an employment letter, and tax 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 contained in the applicant's supporting evidence was inconsistent with the claims made on the application, or that it was false information. 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 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 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.