



U.S. Citizenship  
and Immigration  
Services

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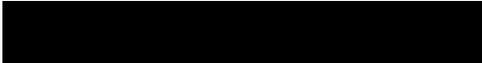
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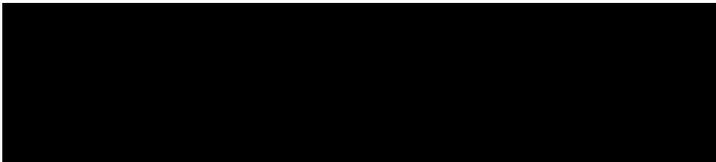
FILE:  Office: Los Angeles

Date: **NOV 03 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 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 asserts that the applicant has submitted sufficient documentation establishing his continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel contends that the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services or CIS) denied the application without undertaking any effort to contact affiants who provided documentation in support of the applicant's claim of 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. 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. 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 July 31, 1990. In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted the following documents:

- An affidavit signed by [REDACTED] who provided her address and phone number and attested to the applicant's residence in the United States since 1981;
- An affidavit signed by [REDACTED] who provided his address and phone number and attested to the applicant's residence in the United States since 1981;
- An affidavit signed by [REDACTED] who provided his address and phone number and stated that he had employed the applicant since 1981 and that he had only been

absent from his job on one occasion for two weeks in 1987 when his father had been ill in Mexico;

- An affidavit signed by [REDACTED] who provided his phone number and stated that he had been the applicant's landlord at an address in Sun Valley, California from 1987 to 1989;
- A letter of employment signed [REDACTED] who provided his address and phone number and stated that he had employed the applicant in his factory, Rito Auto Upholstery, since March 1981;
- An affidavit signed by [REDACTED] who included her address and provided testimony relating to a trip by the applicant to Mexico and his subsequent return to this country in 1987;
- Seven original United States Postal Service receipts for registered mail;
- Two original receipts for telegraphic money transfers from Western Union;
- An original hand-written receipt for a color television;
- An original hand-written receipt for a stereo;
- An original hand-written receipt for a loveseat and sofa;
- An original hand-written receipt for a 14K gold chain;
- An original receipt for dry cleaning;
- An original receipt for auto parts;
- An original hand-written receipt for a stereo and speakers;
- An original receipt for auto repairs; and,
- An original postmarked envelope.

The record shows that the applicant subsequently submitted his Form I-485 LIFE Act application on August 9, 2001. The applicant included the following new documents in support of his claim of residence in this country since prior to January 1, 1982:

- An affidavit signed by [REDACTED] who provided his address and phone number and indicated that he became acquainted with the applicant in 1981 and had remained good friends with him since such date;

- An affidavit signed by [REDACTED] who provided a phone number and who stated that he had known the applicant since 1987 and could attest to his character;
- A letter signed by [REDACTED] who provided her address and phone number, stated that she had become acquainted with the applicant in June 1981, and subsequently employed him to do some carpentry work with cabinets in her apartment;
- A letter of employment signed by [REDACTED] who provided her address, phone number, business card, and business license and stated that she had employed the applicant as an assistant/helper in her gardening business from 1985 to 1990;
- A letter of employment signed by [REDACTED] who provided his address, phone number, and business card, and stated that he had employed the applicant as an assistant/helper on a part-time basis in his gardening business from the middle of 1983 to the end of 1987; and,
- A letter of employment signed by [REDACTED] who provided his address and phone number, and stated that he had employed the applicant on a part-time basis to help him in his gardening business from November 1981 to the middle of 1982.

On May 25, 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 questioned the credibility of receipts submitted by the applicant because some of the receipts appeared brand new rather than old and others had been altered to avoid verification. However, these conclusions are speculative in that such receipts tend to reflect the applicant's careful record keeping and storage and the record contains no forensic evidence to establish that any receipts had been altered with any specific intent or purpose. In addition, the district director noted that the applicant had supplied conflicting testimony regarding his addresses of residence since entering the United States during the course of an interview. A review of the record shows that the applicant has consistently claimed that he lived in North Hollywood, California, then Sun Valley, California, and then North Hollywood, California. The discrepancy in the applicant's testimony regarding his place of residence appears to be the result of the fact that English is not his first language as well as the considerable passage of time. Further, it must be noted that North Hollywood, California and Sun Valley, California are located in the same proximate area even sharing common streets and thoroughfares. 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 an inadequate basis to deny the application.

In this instance, the applicant submitted evidence, including affidavits, letters, and original 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 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.