



U.S. Citizenship  
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Services

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FILE:



Office: Sacramento

Date: OCT 28 2005

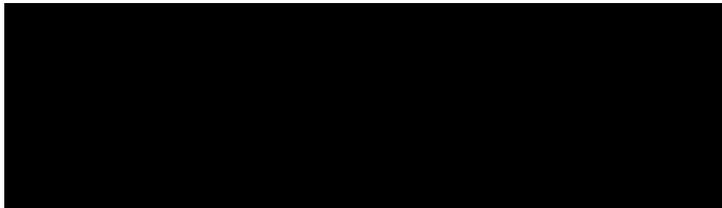
IN RE:

Applicant:



PETITION: 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, counsel asserts that the applicant had submitted sufficient evidence to support his claim of continuous residence in this country from January 1, 1982 through May 4, 1988.

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. 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 for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (INA) on March 29, 1990. In support of his claim of continuous residence in the United States since prior to January 1, 1982, the applicant submitted three affidavits of residence.

Subsequently, on May 28, 2002, the applicant submitted his LIFE Act application. With his LIFE Act application, the applicant included the following new evidence in support of his claim of residence in this country for the requisite period: eight affidavits, three handwritten receipts, and a letter of membership.

On August 4, 2003, 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 indicated that the evidence provided by the applicant in support of his claim of residence was not sufficient to meet his burden of proof without stating any specific deficiencies in such evidence. 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 simply refuse to consider such evidence merely because it is unaccompanied by other forms of documentation.

The statements of counsel on appeal regarding the amount and sufficiency of the applicant's evidence of residence have been considered. In this instance, the applicant submitted evidence, including affidavits, receipts,

and a letter of membership, 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 evidence provided by the applicant 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.