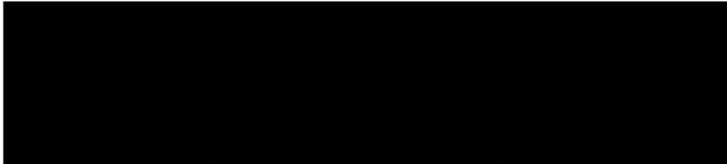


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U.S. Citizenship
and Immigration
Services



L2

FILE: [Redacted]
MSC 01 327 60334

Office: Los Angeles

Date: FEB 06 2007

IN RE: Applicant: [Redacted]

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:

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. 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, Chief
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 determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant contends that he submitted sufficient evidence to support his claim of residence in this country for the requisite period. The applicant reiterates his prior explanation as to how a mistake was made relating to his address of residence in a previously submitted affidavit of residence. The applicant includes a copy of the affidavit in question and a letter that was submitted with his response to the notice of intent to deny.

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 section 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).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

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).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to 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. Here, the submitted evidence is relevant, probative, and credible.

The applicant made a claim to class membership 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 (Act) on June 20, 1990. Subsequently, on August 23, 2002, the applicant filed his Form I-485 LIFE Act application.

In support of his claim of residence in the United States from prior to January 1, 1982, the applicant submitted a residential lease, tax documents, paycheck stubs, two receipts from the California Department of Motor Vehicles, a receipt from a medical clinic, an employment letter, seven affidavits of residence, a school identification card, a California Identification Card, and an affidavit relating to a trip the applicant took outside the United States during the requisite period.

On the Form I-485 LIFE Act application the applicant admitted that he had been arrested for misdemeanor driving under the influence. During the course of his interview on June 12, 2002, the applicant again admitted that he had been arrested for driving under the influence in 1995 in Los Angeles, California. The district director issued a Form I-72, Request for Additional Evidence, which asked the applicant to submit court documents showing the disposition of this charge. The record shows that the applicant subsequently provided documents from the Los Angeles County, California Sheriff's Department and the Superior Court of California for the County of Los Angeles reflecting that no records relating to the applicant had been found.

In the notice of intent to deny issued on October 6, 2004, the district director questioned the veracity of the applicant's claimed residence in the United States. Specifically, the district director concluded that the applicant had failed to submit any evidence of residence for the years 1981, 1982, and 1983, other than affidavits. In addition, the district director also noted that the applicant had submitted an affidavit that attributed an address of residence to the applicant that did not match the address he listed as his residence for the years 1981 to 1985 on the Form I-687 application. The applicant was granted thirty days to respond to the notice.

In response, the applicant submitted a statement in which he declared that the affidavit called into question by the district director had been prepared by a notary. The applicant stated that the notary merely listed his address of residence for the entire requisite period as that address contained in his California Driver License on the date the affidavit was executed in 1990, rather than his actual address of residence for that period from 1981 to 1985. The applicant included a copy of a California Identification Card listing an address of residence that matches that address listed by him for the years 1981 to 1985 on the Form I-687 application, as well as a copy of a California Driver License that listed listing an address of residence that matches that address listed by him for that period including and subsequent to 1985 on the Form I-687 application. The applicant also submitted a new affidavit in support of his claim of residence in the United States for the requisite period.

The explanation advanced by the applicant is considered to be plausible under the circumstances and the documentation provided tends to corroborate such explanation. Moreover, pursuant to *Matter of E-M-*, 20 I&N Dec. 77, 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 an inadequate basis to deny the application.

In this instance, the applicant submitted evidence, including affidavits and copies of contemporaneous documents, which tends to corroborate his claim of residence in the United States during the requisite period. As stated in *Matter of E-M-*, *id*, 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.