U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: Los Angeles Date: OCT 20 2004

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:

[redacted]

PUBLIC COPY

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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988.

On appeal, counsel for the applicant submits a separate statement in which he reaffirms the applicant's claim to have continuously resided in the U.S. from prior to January 1, 1982 through May 4, 1988. Counsel also submits additional evidence in an attempt to address an apparent discrepancy cited in the district director's denial notice.

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. 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). 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 (5th 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. 8 C.F.R. § 245a.12(e).

In an attempt to establish continuous unlawful residence since before January 1, 1982, as claimed, the applicant furnished the following evidence:

- An affidavit from [redacted] attesting to the applicant having resided in Los Angeles, California, since December 1981. The affiant bases his knowledge on having shared an apartment with the applicant after having arrived in this country;

- An affidavit from [redacted] attesting to the applicant having resided in Los Angeles, California, since December 1981. The affiant bases his knowledge on the fact that he lived directly across the street from the applicant;

- A letter from [redacted] Church, Los Angeles, California, who asserts that the applicant has attended and been a member in good standing of that religious organization since 1981;

- An employment statement from [redacted] of Mike Fashions, Los Angeles, California, who asserts he employed the applicant as a machine operator from December 1981 to December 1982. In order to demonstrate the legitimacy of his enterprise, the affiant, [redacted] also includes a California State

Business Tax Registration Certificate along with a Certificate of Registration from the California Garment Manufacturing Industry, which date from March 2, 1981 and July 1, 1981, respectively;

- An employment statement from of Los Angeles, California, who indicates she employed the applicant as a landscaper involved in lawn and yard maintenance from February 1983 to December 1984;

- A photocopied earnings statement from , San Dimas, California, made out to the applicant and covering the period from July 27, 1985 to August 2, 1985;

- Photocopies of a year-to-date summary earnings/tax statements from , Los Angeles, California, made out to the applicant for the cumulative pay periods through December 14, 1985 and December 12, 1986, respectively;

- Photocopies of separate earnings statement from , made out to the applicant for the pay periods ending January 10, 1986 and July 18, 1986, respectively.

- A photocopy of a 1987 W-2 Wage and Tax Statement from Cosmos Food Co., Inc., made out to the applicant;

- Photocopied 1987 and 1988 W-2 Wage and Tax Statements from Los Angeles, California, which are made out to the applicant;

- A photocopy of a 1988 W-2 Wage and Tax Statement from Peter Fashion Los Angeles, California, which is made out to the applicant;

- A photocopy of a rental agreement from Bevray Properties made out to the applicant for the month beginning October 11, 1986; and

- Photocopied notices of rent increases from Bevray Properties dated July 15, 1987 and January 29, 1988, respectively, which are made out to the applicant.

In the notice of intent to deny, the district director cited an apparent discrepancy involving the aforementioned letter from of attesting to the applicant's membership since 1981. According to the notice of intent, when telephonically contacted by the district office, an official from St. Bernard Church indicated that association with the church did not begin until 1996. This inconsistency, according to the district director, cast doubt on the credibility of the applicant's claim to continuous residence in the U.S. since prior to January 1, 1982.

On appeal, counsel submits a subsequent written clarification statement from In his subsequent statement, responded that, while his own tenure at did not commence until 1996, his prior declaration attesting to the applicant's association and attendance since 1981 was based on official church records. In support of his statement, enclosed a copy of a parish registration form upon which he claimed to have based his declaration on behalf of the applicant. An examination of the parish registration form discloses that the applicant has been a member of that parish since 1981.

The credible letter and supporting documentation from appear to have satisfactorily resolved the perceived discrepancy cited in the notice of intent regarding the applicant's claim and documentation.

The applicant has submitted at least five affidavits attesting to his residence as well as his employment in the U.S. during the period in question. It should be emphasized that affidavits in certain cases can effectively meet the preponderance of evidence standard. 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. In this case, the affidavits furnished by affiants and employers who have provided their addresses, their current phone numbers and even their official state tax registration certificates, have indicated their willingness to come forward and testify in this matter if necessary, 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.

It should also be noted that, unlike many applicants for permanent residence under the LIFE program, the present applicant has actually provided considerable contemporaneous evidence of residence consisting of earnings statements, W-2 Wage and Tax forms, and rental agreements, all of which date from the period in question.

The evidence provided by the applicant establishes, by a preponderance of the evidence, that the applicant 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.