U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: Houston Date: OCT 21 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]

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

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DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Interim District Director, Houston, Texas, 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 for the applicant submits a separate statement in which she asserts that the applicant has continuously resided in the U.S. since 1980. Counsel also submits an affidavit from the applicant in which the applicant attempts to explain and resolve certain apparent inconsistencies cited by the district director in his decision denying the application.

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:

- A Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (INA), which was signed by the applicant on October 21, 1991;

- An affidavit from [redacted], general contractor/carpenter, who attests to having employed the applicant as a carpenter's helper from November 29, 1981 to September 23, 1983 [the affiant, Mr. [redacted] provides a photocopy of his business card, including his address and phone number];

- A form affidavit from [redacted] who attests to the applicant having lived at the affiant's place of residence from April 1981 to April 1985;

- A form affidavit from [redacted] attesting to the applicant having resided in Humble, Texas from May 1985 to February 1990. The affiant bases his knowledge on having been a friend of the applicant;

- A form affidavit from , attesting to having known the applicant since January 1984. The affiant bases his knowledge on the applicant having been the affiant's supervisor while performing construction work in Houston, Texas, from January 1984 to September 1990;

- An affidavit from attesting to having known the applicant since early 1981. The affiant bases his knowledge on having been the applicant's close friend for many years;

- A handwritten affidavit from attesting to the applicant having departed the U.S. on a trip to visit his family in Mexico on December 12, 1987; and

- Photocopies of envelopes having been mailed by the applicant from an address in Houston, Texas, to individuals in Mexico and bearing the following postmark dates: May 2, 1983, September 15, 1984 and April 20, 1985.

In his decision, the district director noted what appeared to be an inconsistency regarding the applicant's date of entry into the U.S. Specifically, on the applicant's documentation, including his application Form I-687 Application and his Biographic Information Form G-325A, he indicates he first entered the U.S. in January 1980. On the occasion of the applicant's adjustment interview, the applicant informed the examining officer that he made two brief departures for Mexico in 1984 and in 1986. However, according to the notice of intent to deny, when apprehended in August 1986 at a worksite in Georgia, the applicant informed the arresting officer that he entered the U.S. for the first time in January 1986. As such, according to the notice of intent, the applicant could not have been residing and working in the U.S. since 1980.

On appeal and in response to the notice of intent to deny, counsel submitted statements in which she affirmed that the applicant has, in fact, resided in the U.S. since 1980 and attempted to resolve any apparent inconsistency regarding the applicant's date of initial entry. In this case, the record includes a Form I-213 Record of Deportable Alien, which sets forth the circumstances of the applicant's apprehension at a construction worksite near Jonesboro, Georgia on August 8, 1986 for entry into the U.S. without inspection. The I-213 indicates that the applicant's date of *last* entry into the U.S. was January 1986. This, however, does not preclude the applicant having made previous entries into the U.S. Nor is it at variance with what the applicant told the examining officer during his adjustment interview regarding his re-entries in 1984 and 1986, respectively. Finally, there is *no* indication on the Form I-213 or anywhere else in the record of the applicant having informed the arresting officer on August 8, 1986 that January 1986 was his *first* entry into the U.S.

Counsel's attempt to convincingly resolve the matter of what the district director regarded as an inconsistency as to the applicant's date of initial entry is accompanied by the submission of credible supporting evidence of residence. In support of his application, the applicant has submitted 6 *(six)* third-party affidavits attesting to his continuous residence as well as his employment in the U.S. during the period in question. Affidavits in certain cases can effectively meet the preponderance of evidence standard. The director has not established that any of the information in the affidavits and statements submitted by the applicant was false or inconsistent or at variance with the claims made by the applicant on the application. 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. The documents that have been furnished, including affidavits and letters furnished by affiants, acquaintances and employers who have provided their

current addresses and phone numbers and 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, including photocopies of envelopes sent by the applicant with postmark dates from the period in question.

The documentation provided by the applicant establishes, by a preponderance of the evidence, that he has satisfied 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.