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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: PORTLAND Date: OCT 22 2004

IN RE: Applicant:: [redacted]

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:

[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. Any further inquiry must be made to that office.

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, Portland, Oregon, and is now before the Administrative Appeals Office 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 prior to January 1, 1982.

On appeal, the representative asserts that the applicant has provided all available evidence from the required time period. The representative further asserts that the applicant arrived in the United States in April 1981, and attempts to account for the applicant's inability to obtain and provide contemporaneous evidence of continuous residence since January 1, 1982.

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).

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 through May 4, 1988, the applicant furnished the following evidence:

- A form affidavit notarized August 21, 1990 from [redacted] who attested to the applicant's continuous residence in Burbank California since April 1981.
- A form affidavit notarized August 21, 1990 from [redacted] who attested to living with the applicant in Burbank, California from April 1981 through August 1987.
- Two notarized form affidavits from [redacted] who attested to the applicant's residence in Burbank, California from August 1982 through January 1990. [redacted] also claimed to have worked with the applicant at McDonalds.
- Two earnings statements and an employment letter dated August 27, 1990 from 1928 Jewelry Company indicating that the applicant was in its employ from February 24, 1988 through November 15, 1988.
- A list of his employment history from 1981 to the present.

On May 3, 2003, the applicant was provided the opportunity to submit additional evidence establishing his entry into the United States prior to January 1, 1982.

In response, the applicant provided a self-serving statement reaffirming his April 1981 entry into the United States. The applicant stated that he resided with friends and paid cash for his portion of the rent and bills. The

applicant further stated that during 1981 through 1988, he worked at several jobs, but frequently performed yard and refrigeration work for [redacted] who is now deceased. The applicant asserted that he received his wages in cash from [redacted] As a result, he is unable to provide employment records, pay stubs, utility bills or rent receipts. Under these circumstances, the applicant's inability to submit additional contemporaneous documentation of residence is not found unduly implausible. The regulations at 8 C.F.R. § 245a.2(d) provide a list of documents that may establish residence and specify that "any other relevant document" may be submitted.

In denying the application, the district director noted that there was a contradiction regarding the applicant's employment at 1928 Jewelry Company. Specifically, the applicant indicated on his Form I-687 application and Form G-325A that his employment occurred from 1981 to 1988. However, the company's employment letter only attested to employment from February 24, 1988 to November 15, 1988.

On appeal, the representative addresses the inconsistency regarding the applicant's employment at 1928 Jewelry Company, citing that the individual who assisted with the preparation of the applicant's application incorrectly listed the date of employment due to a misunderstanding.

The district director further noted that because the applicant's children were born outside of the United States it bears a "negative factor." The applicant, however, has stated that due to lack of medical insurance, his common-law spouse returned to Mexico to have their children. Except for a short visit to Mexico in 1987 for the birth of his second child, the applicant has not left the United States.

The district director also noted in his decision that the affidavits failed to include photocopies of driver's licenses or State ID's of the affiant's or proof of their immigration status. However, the regulations do not require this act. As the affidavits were all notarized, it can be construed that the individuals would have shown some form of identification at the time.

In this instance, the applicant submitted several affidavits attesting to his residence and employment in the U.S. during the period in question. 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. The documents that have been furnished, including affidavits submitted by individuals who have provided their current addresses 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.

The documentation 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.