U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: MAY 04 2006
MSC 02 087 60241

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

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 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 since before January 1, 1982 through May 4, 1988.

On appeal, the applicant asserts that he has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant provides copies of documents that were previously submitted in support of the appeal.

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. 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 applicant 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 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.

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. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence throughout the application process:

- An undated affidavit from his brother, [redacted] who attested to the applicant's residence in the United States since November 1981. [redacted] asserted, "...we used to see each other couple times a month since them [sic]."

- An amended affidavit notarized May 25, 1990 from [redacted] who indicated that he supported the applicant from November 1981 until 1989.

- An additional affidavit notarized August 27, 2000 from [redacted] who indicated that he and his family entered the United States in 1981. [redacted] asserted that when his parents returned to Mexico in 1981, they left the applicant in his legal and physical care. [redacted] asserted the applicant did not attend school in the United States and that he financially supported his brother during the requisite period.

- An additional affidavit notarized April 6, 2004 from [redacted] who indicated that the applicant resided with him from November 1981 to December 1988 at [redacted] Mira Loma, California.

- An affidavit notarized October 23, 2001 from [redacted], foreman at Tenerelli Orchards Company in Littlerock, California who indicated that he has known the applicant since November 1981. [redacted] asserted that the applicant, who was ten years old at the time, would occasionally accompany his brother, [redacted] to work.

- An additional affidavit notarized April 1, 2004 from [redacted] who reasserted the veracity of his initial affidavit.

- An affidavit notarized October 23, 2001 from [redacted] of Miraloma, California who indicated that she has known the applicant since he was ten years old. [redacted] asserted that the applicant resided with his eldest brother, [redacted] who rented a guest unit from her at [redacted] Mira Loma, California. [redacted] asserted that [redacted] and the applicant resided at this address from November 1981 to December 1988.

- An additional affidavit notarized April 3, 2004, from [redacted] who reasserted the veracity of her initial affidavit.

As evidence of his brother's employment, the applicant submitted a social security statement reflecting [redacted] earnings since 1987 along with affidavits from two employers attesting to the [redacted]s employment during the requisite period.

The applicant, throughout the applicant process, asserts that he was only ten years old at the time he entered the United States, and resided with his older brother, [redacted] until 1989. The applicant also asserts that he did not attend school or visit any hospitals in the United States due to fear of being deported. As a result, the applicant states that he is unable to submit records such as school transcripts and medical records. Under these circumstances, the lack of contemporaneous documentation is therefore not found to be unusual.

In this instance, the applicant submitted evidence, 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 in this 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 documentation provided by the applicant supports 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.

Beyond the decision of the director, it must be noted that, in another proceeding, the applicant's Form I-687 Application for Temporary Residence filed on March 7, 2001 was approved by Texas Service Center on June 20, 2003. The district director sent a notice dated July 28, 2004 to the applicant's address of record advising him of the 43-month time-period in which to file a Form I-698, Application to Adjust Status from Temporary to Permanent Status. Citizenship and Immigration Services records, however, does not reflect that the applicant has filed said form.

**ORDER:** The appeal is sustained.