

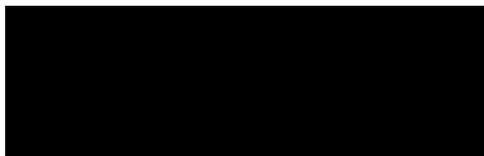
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U.S. Citizenship
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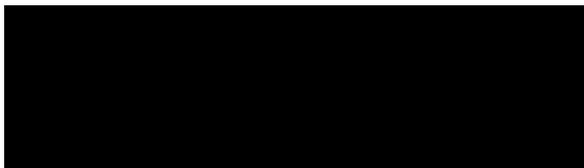
FILE: [REDACTED] Office: Los Angeles

Date: **APR 06 2005**

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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, Los Angeles, California, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The director noted that the applicant failed to submit the originals of his pay stubs that were requested in February 2003. The director also noted that the applicant had submitted a letter from [REDACTED] on May 19, 2003 and determined that the letter failed to overcome the ground for denial as stated in her Notice of Intent to Deny (NOID) dated April 16, 2003. In her NOID, the director found:

The affidavit of witnesses that you submitted with your application for LIFE ACT on 09/02/01 to show continuous unlawful presence in the US since 1/1/81 through 5/4/88 without further corroborating evidence fails to establish by a preponderance of the evidence that you have had continuous unlawful presence in the United States since before January 1, 1982 through May 4, 1988.

The director concluded that the applicant failed to establish he resided in the United States during the requisite period of January 1, 1982 through May 4, 1988.

On appeal, counsel states:

[REDACTED] has proven by a preponderance of the evidence that he has continuously resided in the U.S. since before January 1, 1982 through May 4, 1988. As proof of his residence he submitted paycheck stubs dated from 1981 through 1987. In addition, [REDACTED] submitted numerous affidavits from individuals declaring their first-hand knowledge of [REDACTED] residence in the U.S. since 1981. Their declarations are detailed as to date, time and place. Specifically, they include the reasons why these individuals recall the exact year they met [REDACTED]. These are well-established church officials, homeowners, business people and community leaders who do not have a self-vested interest or impetus to declare anything but the truth. BCIS should have contacted these individuals to discuss and confirm their first-hand knowledge of [REDACTED]'s residence in the U.S. for the past 22 years. This communication is especially appropriate in light of the CSS membership history. At the time [REDACTED] first attempted to apply for amnesty, in the late 1980's, he was told that an exit to Mexico rendered him ineligible.

At that time he had numerous documents, including receipts and correspondence, proving his residence in the U.S. since before 1982. However, in the last 15 years [REDACTED] has moved residences several times and in the process lost documentation proving the requisite residence in the U.S. Government delay in allowing him to apply for the relief for which he qualified greatly prejudiced [REDACTED]. In light of such prejudice, BCIS should have taken every reasonable step to review and consider the evidence in the file. BCIS failed to do so by not taking the time to interview the affiant's of the declarations submitted by Mr. [REDACTED]. It is not unusual for a BCIS officer to contact an individual who has submitted a letter to the BCIS on behalf of an individual seeking immigration relief. For example, in

investigating the validity of a marriage, in conjunction with a spousal petition, the BCIS has been known to call landlords and employers of the applicant/petitioner to confirm that the parties in question present themselves to the world as a married couple. Letters of employment submitted as part of adjustment of status applications are also subject to verification by the BCIS. The same consideration should have been given to [REDACTED]

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 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. See 8 C.F.R. § 245a.12(e).

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. See *Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989).

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).

To establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant furnished evidence including seven letters of residence, an employment letter and a Social Security Administration request to the applicant concerning his employment at Western Medical Enterprises, Inc during 1988. The record also contains copies of pay stubs dating from June 1, 1981 to June 4, 1987 showing the applicant as the employee. These pay stubs have been certified by the applicant's attorney but provide little evidentiary value because they do not specify the company where the applicant worked. The statements of counsel on appeal regarding the sufficiency of the applicant's evidence of residence have been considered. Furthermore, counsel's contention that the applicant's inability to produce additional evidence of residence for the period in question was the result of the passage of time is considered to be a reasonable explanation in these circumstances.

In this instance, the applicant submitted evidence, including contemporaneous documents, which tends to corroborate his claim of residence in the United States during the requisite period. The 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 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 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 director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.