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

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FILE:



Office: Los Angeles

Date: **APR 06 2005**

IN RE:

Applicant:



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.

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

On appeal, counsel asserts that the applicant submitted sufficient documentation to establish his eligibility for permanent resident status under the LIFE Act. Counsel provides two new affidavits of residence, as well as previously submitted documents 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).

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).

In support of his claim of continuous residence in the United States since prior to January 1, 1982, the applicant submitted two affidavits of residence, four original employment letters, an original letter from the First Interstate Bank, an original letter reflecting the applicant's membership in the Islamic Center of Northridge, California, a photocopied letter reflecting medical treatment received by the applicant, an original lease and four rent receipts.

On April 19, 2004, the district director issued a notice of intent to deny to the applicant informing him of the Immigration and Naturalization Service's, or the Service's (now Citizenship and Immigration Services, or CIS) intent to deny his application because he failed to submit sufficient evidence of continuous unlawful residence in the United States from January 1, 1982 through 1983. Specifically, the district director questioned the veracity of the applicant's claim of residence because he testified during the course of two separate interviews that he first entered the United States in December of 1980 and had only been absent from this country on two subsequent occasions, the first of which occurred in June 1987, despite the fact that he admitted he had been absent from the United States when he was married in Pakistan on December 3, 1981 on the Form G-325, Biographic Information report. However, the issue in these proceedings is whether the

applicant continuously resided in the United States in the period from prior to January 1, 1982 to May 4, 1988, and the duration of absences from this country during this specific period. The Form I-687, Application for Temporary Resident Status under Section 245A of the Immigration and Nationality Act (INA), and the various class membership determination forms ask applicants to list only those absences occurring subsequent to January 1, 1982, with no requirement to list absences prior to this date. Hence, it is likely if an applicant is asked about an absence from the United States, he or she may very well provide a response that relates only to absences during the period from January 1, 1982 to May 4, 1988, with no mention of any absences occurring either prior to or after these particular dates. The applicant's testimony and supporting documentation tend to corroborate his claim that he first entered this country in December 1980 and continuously resided in the United States since such date. Therefore, the fact that during the course of his interviews the applicant did not disclose an absence from the United States that occurred prior to January 1, 1982, is not considered to be fatal to his claim of residence in this country for the requisite period.

In this instance, the applicant submitted evidence, including affidavits, employment as well as other letters, and contemporaneous documents, which tends to corroborate his claim of residence in the United States during the requisite period. The district director has not sufficiently 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 district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.