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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: BALTIMORE

Date:

IN RE:

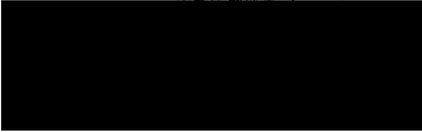
Applicant:



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. 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, Baltimore, Maryland, 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 from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel states because some of the affiants were not available at the time Citizenship and Immigration Services telephoned, it did not adequately pursue the matter and let one telephone call be the extent of its investigation.

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 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 affidavit from [REDACTED] who indicated that he has known the applicant since September 1982 and attested to the applicant's employment at Khan's Pharmacy in Queens, New York and his residences in Staten Island, New York and Baltimore, Maryland.
- An affidavit from [REDACTED] who indicated that the applicant resided in her home in Canada from March 23, 1988 through April 25, 1988.
- Affidavits from [REDACTED] who indicated that he has known the applicant since November 1984 while he was working as a bus-boy at Danny's Restaurant in Baltimore, Maryland. [REDACTED] asserted that he has maintained close contact with the applicant since that time.
- A letter from [REDACTED] who indicated that the applicant was residing in his home from April 1983 through June 1988.

- Rent receipts issued during April 1985, May 1985 and March 15, 1986.
- An employment letter from [REDACTED] manager/co-owner of Danny's Restaurant in Baltimore, Maryland who indicated that the applicant was in his employ as a bus-boy/dishwasher from 1983 through March 1988.
- A lease agreement entered into on November 11, 1981 between the applicant and a landlord for residence in Staten Island, New York.
- An affidavit from [REDACTED] who indicated that the applicant resided in her home in Staten Island from November 1981 through March 1983.

In an effort to verify their statements, telephone calls were made to some of the affiants, but [REDACTED] number was disconnected, [REDACTED] number did not belong to his practice, and [REDACTED] was not available until after 6:00 p.m. The record, however, does not reflect that the affiants, who provided their addresses, were ever contacted by mail.

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 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 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. In this case, the affidavits furnished by affiants who have provided their addresses 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 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.