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U.S. Citizenship
and Immigration
Services

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FILE: 

Office: HOUSTON Date: AUG 22 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. 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, Houston, Texas, 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 provides copies of previously submitted documentation 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 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:

- A notarized affidavit from [REDACTED] who indicated that she had known the applicant since January 5, 1986. [REDACTED] asserted that she worked with the applicant until mid December 1988.
- A notarized affidavit from [REDACTED] who indicated that she met the applicant in December 1981 and he was in her employ as a gardener and assisting her in cleaning apartments until November 20, 1985. [REDACTED] asserted that the applicant resided in an apartment in the back of her home at 228 Estelle, Houston, Texas.
- A notarized affidavit from [REDACTED] who indicated he has known the applicant since 1984.
- A notarized affidavit from [REDACTED] who indicated she has known the applicant since 1984 and attested to the applicant's residence at [REDACTED]

- A notarized affidavit from [REDACTED] who indicated that he has known the applicant since January 1982.
- Notarized affidavits from [REDACTED] and [REDACTED] who indicated that they have known the applicant since December 1981, and have remained good friend since that time.
- A notarized affidavit from [REDACTED] who indicated that he has known the applicant since December 1981 and has seen the applicant on a weekly basis since that time.

In his Notice of Intent to Deny issued on May 16, 2003, the director noted:

The Service records reflect that on April 28, 2003, accompanied by Attorney, [REDACTED] you appeared for you interview for adjustment of status under the LIFE Act. During the interview, you informed the Service under oath, both verbally and in a sworn statement, that after six years of elementary school education, you worked with your father for three years in Mexico.

The director noted that based on the applicant's date of birth coupled with his six years of education and three years of work experience, his first entry into the United States was no earlier than 1983.

Among the documents submitted on appeal is an affidavit from the applicant in which he explains that he was attending school and playing music in a band with his father simultaneously, and a letter from a school in Mexico stating that he completed 6th grade in 1980. The sworn statement from the April 28, 2003 interview appears to be a translation of a verbal statement, not a translation of an actual written statement. As such, the accuracy of the translation cannot be verified. The applicant's explanation is found to be plausible.

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 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.