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U.S. Citizenship
and Immigration
Services

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FILE:



Office: HOUSTON

Date: AUG 29 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. Wismann, 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 any discrepancy regarding the applicant's employment with [REDACTED] is the result of a misunderstanding. Counsel further asserts that the applicant did in fact meet [REDACTED] in 1981, and will try to obtain another affidavit from [REDACTED] to clarify the mistake. Counsel states the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988.

It is noted that the director, in denying the application, did not address the evidence furnished initially, and did not set forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3. As such, the documentation submitted throughout the application process will be considered on 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 1988 wage and tax statement issued to the applicant from [REDACTED] Used Restaurant Equipment in Houston, Texas.
- A 1987 Form 1099-Misc and several pay stubs issued to the applicant from Riggins Surface Repair, Inc. in November and December 1987 and January and February 1988.
- An envelope postmarked April 30, 1983 and addressed to the applicant's address in Sheaphard, Texas.

- A five-month lease agreement entered into on December 10, 1987 between the applicant and Bell Vard Apartments at [REDACTED]
- An affidavit from [REDACTED] attested to the applicant's residence at [REDACTED] Houston, Texas since 1987. M [REDACTED] asserted that he and the applicant are co-workers at Mark's Commercial Food Equipment Sales.
- An affidavit from [REDACTED] who attested to the applicant's residence at [REDACTED] Houston, Texas. [REDACTED] asserted that he and the applicant are co-workers at Riggins Surface Repair Inc.
- An affidavit from [REDACTED] who attested to the applicant's residences in Houston, Texas since December 1987.
- An affidavit from [REDACTED] who indicated that he has known the applicant since June 1981 and has had personal contact with the applicant on a monthly basis.
- An affidavit from [REDACTED] who attested to the applicant's residences in Houston, Texas since October 1986.
- An affidavit from [REDACTED] who indicated that he has known the applicant since December 30, 1981 and has had personal contact with the applicant on a weekly basis.
- A letter from [REDACTED] of St. Matthew's Church in Bellaire, Texas who indicated he met the applicant in December 1980 when he was the pastor of the Alliance Church. [REDACTED] asserted in 1982, he moved to McAllen, Texas and lost contact with the applicant. In 1986, he met the applicant again at St. Matthew's Church. [REDACTED] stated that the applicant has been a member of St. Matthew's Church since November 1985.
- An affidavit notarized July 17, 1990 from [REDACTED] owner of [REDACTED] Ranch in Sheaphard, Texas who indicated the applicant was in his employ from September 15, 1981 through September 5, 1986.
- An affidavit from [REDACTED] who indicated that the applicant was in his employ as an assistant mechanic in Houston, Texas from November 1986 through October 1987.
- A letter dated July 16, 1990 from [REDACTED] general manager of Riggins Surface Repair Inc., who indicated that the applicant was employed from October 27, 1987 through February 2, 1988.
- The applicant's bankbook from Coastal Banc reflecting deposits and withdrawals from November 1987 through January 1988.
- A Social Security Statement dated May 23, 2001 reflecting the applicant's 1988 earnings.

- An affidavit from [REDACTED] who indicated that he has known the applicant since March 1981 and attested to the applicant's residence in the United States since 1981.

At the time of his interview on May 8, 2003, the applicant admitted in a sworn statement that he had worked at the [REDACTED] for approximately five years and after he departed the ranch in 1986 he never saw [REDACTED] again. The applicant further admitted that he was unable to locate [REDACTED] and, therefore, did not have a chance to obtain a letter of employment.

The director issued a Notice of Intent to Deny dated June 19, 2003, informing the applicant of the inconsistencies between his oral testimony, sworn statement, and the documentation presented with his application namely, the documents from [REDACTED] indicated that he has known the applicant since December 1980; however, the applicant claimed on his Form I-687 application and Form to Determine Class Membership that he first entered the United States in September 1981. The applicant claimed that he was unable to locate [REDACTED] in order to obtain a letter of employment, however, the record contains a letter signed by [REDACTED] attesting to the applicant's employment.

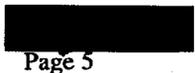
On appeal, the applicant asserted in part:

The Notice of Intent to Deny stated that when I was asked about [REDACTED] I informed Officer [REDACTED] that I never asked [REDACTED] for proof of employment. I did ask him for proof of employment. In fact, I was the one who obtained the affidavit from Mr. [REDACTED]. There may have been some confusion during the interview because I do not remember officer [REDACTED] asking me this question. However, if he did ask me this question I must have misunderstood him because I was very nervous.

Regarding [REDACTED] letter, the applicant asserts that the letter contains an error as he met [REDACTED] in 1981 and will try to obtain another letter from [REDACTED] to clarify the mistake. To date, no additional letter has been provided by [REDACTED]. Nevertheless, the applicant's statements have been considered and he has provided a reasonable explanation for the discrepancies [REDACTED] letter and the employment document from [REDACTED].

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. 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.



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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.