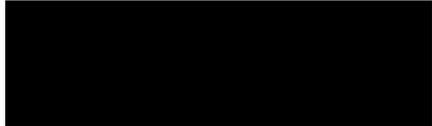


Identify any areas needed to  
prevent clear unauthorized  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



JAN 27 2005

FILE:



Office: Houston

Date:

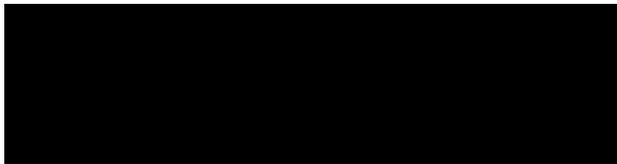
IN RE:

Applicant:



PETITION: 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, 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 (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 from before January 1, 1982 through May 4, 1988.

On appeal, the applicant asserts that he has submitted sufficient evidence to support his claim of continuous residence in this country since prior to January 1, 1982. The applicant indicates that any purported discrepancies between his testimony at the time of his interview and the testimony contained within his supporting documents arose from a typographical error and miscommunication.

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. 8 C.F.R. § 245a.12(e). When something is to be established by a preponderance of evidence it is sufficient that the proof only establish that it is probably true. *See Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989).

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).

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, as claimed, the applicant furnished six affidavits of residence and an employment letter.

In the notice of intent to deny issued on September 10, 2003, the district director questioned the veracity of the applicant's claim of residence in the United States during the requisite period because of testimony he provided at the interview relating to his LIFE Act application on March 3, 2003. Specifically, the district director indicated that the applicant's testimony regarding the date he began working for RML Metals conflicted with the testimony provided in the employment letter cited above that had been submitted in support of his claim of residence. However, an examination of the interviewing officer's notes reveals no admission or statement made by the applicant relating to the specific date he began working for RML Metals that could be perceived to directly contradict or conflict with either his claim of residence in this country or any claimed employment during the requisite period.

The district director noted that the applicant submitted an affidavit signed by [REDACTED] who stated that he had known the applicant since he came to the United States in February 1981 through the date the document was executed on March 3, 2003. The district director declared that the information contained in the affidavit was at variance with applicant's testimony that he first entered the United States in July 1981. The district director further noted that the applicant also testified that he had not known [REDACTED] to meeting him in 1991, and that he worked with Mr. [REDACTED] from 1991 to 1998. The notes of the interviewing officer directly conform to the district director's characterization of the applicant's testimony regarding his relationship with Mr. [REDACTED]

On appeal, the applicant indicates that the February 1981 date listed in the affidavit signed by [REDACTED] was a typographical error made by the notary who prepared the affidavit. The applicant indicates that any further discrepancies between his testimony and the testimony contained in his supporting documents as well as any inconsistencies in his own testimony arose as a result of miscommunication during his interview. Although the record is clear in demonstrating that the applicant provided contradictory testimony at his interview, it must be noted that he is a Spanish-speaking native of Mexico whose knowledge of English must be considered to be that of a second language. In addition, the applicant's testimony as well as the testimony contained in his supporting documents was provided to describe events that occurred over twenty-one years ago, a significant and considerable period of time. The explanation offered on appeal that any purported discrepancy regarding the applicant's residence in the United States is the result of a miscommunication is considered reasonable under these circumstances and appears to have credibly resolved the questions raised by the district director regarding applicant's entry into this country prior to January 1, 1982.

In this instance, the applicant submitted evidence, including affidavits and an employment letter, which tends to corroborate her 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.