

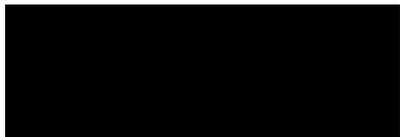
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U.S. Citizenship
and Immigration
Services



JAN 27 2005

FILE:

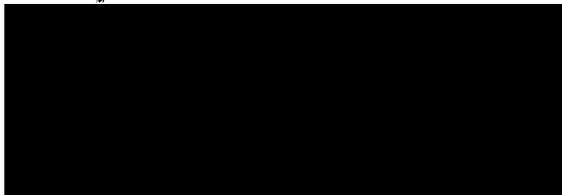
Office: Baltimore

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, Baltimore, Maryland, 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 failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant had submitted sufficient evidence to support his claim of continuous residence in this country from January 1, 1982 through May 4, 1988. Counsel contends that the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) has failed to recognize the difficulty in attempting to obtain evidence relating to events that occurred more than twenty years ago.

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).

The applicant is a class member in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (INA) on May 24, 1990. In support of his claim of continuous residence in the United States since prior to January 1, 1982, the applicant submitted two employment letters and an affidavit of residence. Subsequently, on June 11, 2002, the applicant submitted his LIFE Act application. With his LIFE Act application, the applicant included copies of previously submitted supporting documents, as well as four new affidavits of residence.

On June 11, 2003, the district director issued a notice of intent to deny to the applicant informing him of the Service's 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 May 4, 1988. Specifically, the district director observed that the applicant had submitted only third-party statements and affidavits that are not accompanied by other credible documentation. However, pursuant to *Matter of E--M--*, *supra*, affidavits in certain cases *can* effectively meet the preponderance of evidence standard, and the district director cannot simply refuse to consider such evidence merely because it is unaccompanied by other forms of documentation.

In addition, the district director stated that the applicant was questioned regarding when and where he entered the United States during the requisite period at the time of his interview on March 11, 2003. The district

director concluded that the applicant failed to provide credible explanations as to when and how he entered this country in March 1981 and then again in 1987. However, the record does not contain any evidence, such as the notes of the interviewing officer, to reflect specific questions that were asked during the interview or responses that were provided by the applicant. Therefore, the district director's conclusions regarding the credibility of the applicant's claim of residence and the sufficiency of his supporting documentation as expressed in the notice of intent must be considered as questionable as such conclusions are unsupported by the evidence contained in the record.

The applicant was granted thirty days to respond to the notice and provide additional evidence in support of his claim of residence in the requisite period.

In response, counsel submitted three new affidavits of residence in support of the applicant's claim of residence in the United States from prior to January 1, 1982 to May 4, 1988. Counsel also provided a statement in which he asserted that the applicant had submitted sufficient evidence to support his claim of continuous residence in this country for the period in question.

The district director determined that the applicant had failed to establish his claim of residence for the requisite period and denied the application on December 12, 2003. In the notice of decision, the district director stated that a Service officer had attempted to verify information contained in applicant's supporting documentation by contacting the affiants who provided affidavits of residence and his former employers. While the record contains a "Form I-485 Processing Worksheet" reflecting attempts made to verify the information contained in the applicant's supporting documents, the notes contained in this document are skeletal and informal at best and neither accurately nor fully reflect conclusions and statements made in the notice of decision. Furthermore, this worksheet is the only record of these conversations in the record of proceeding and appears to have been made sometime after the fact. As such, this worksheet must be considered to be a second or third-hand recounting of the calls. In such cases, the record must then at least contain a first-hand contemporaneous account by the Service employee who made the call in which he or she identifies himself or herself and provides very specific information as to whom he or she spoke to, what was said and when the call was made.

The statements of counsel on appeal regarding the amount and sufficiency of the applicant's evidence of residence as well as the considerable passage of time have been considered. The inconsistencies and discrepancies set forth in the notice of decision have either been adequately addressed and resolved by the applicant or are not sufficient to call into question the veracity and reliability of the application and supporting evidence. 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 applicant in this case has provided five affidavits and two employment letters affirming his residence and employment in this country during the period in question. Such documents may be accorded substantial evidentiary weight and are sufficient to meet his burden of proof of residence in the United States for the requisite period.

The evidence provided by the applicant establishes, by a preponderance of the evidence, that he 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.