

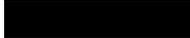


U.S. Citizenship
and Immigration
Services

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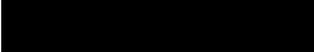


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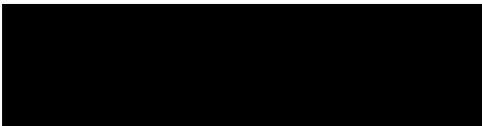
Office: Baltimore

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

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 Interim District Director, Baltimore, 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 continuous residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988.

On appeal, counsel for the applicant asserts that the evidence provided by the applicant should serve to establish his continuous residence in the U.S. from prior to January 1, 1982 through May 4, 1988. Counsel further asserts that given the passage of years since the period in question, it is unreasonable to require the applicant to submit additional documentation in support of his claim. In addition, counsel submits further evidence 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. 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). Preponderance of the evidence has also been defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979).

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).

In an attempt to establish continuous unlawful residence since before January 1, 1982, as claimed, the applicant furnished the following evidence:

- A Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act, which was signed by the applicant on May 22, 1991;
- A separate, personal affidavit from the applicant, in which he attempts to provide information regarding his entry into the U.S., his continuous residence, and his dealings with the Immigration and Naturalization Service (now, Citizenship and Immigration Services, or CIS);
- An employment letter from [REDACTED] Manager, Shish Mahal Restaurant, New York City, who attests to the applicant having been employed as busboy at that concern from September 1981 to April 1982;

- An affidavit from [REDACTED] attesting to the applicant having resided with the affiant at the latter's place of residence in 1986 and 1987; and
- Air Mail envelopes addressed to the applicant in New York City, carrying postmarks with the following stamped dates: November 15, 1981, February 7, 1982 and July 1, 1987.

In his notice of intent to deny, the district director made reference to certain deficiencies in the applicant's documentation. It was noted that the applicant claimed on his I-687 application and personal affidavit to have first entered the U.S. in September 1981 on a B-2 visitor visa. However, according to the district director, the applicant failed to submit evidence of such entry into the U.S., claiming at the time of his adjustment interview that he had misplaced the original passport containing the B-2 visa and arrival stamps. A further deficiency noted by the district director was the applicant's failure to provide a complete birth record or at least an official certificate of non-availability of such birth document.

While the district director focuses on the applicant's apparent failure to provide documentation of initial entry, there is no requirement in the LIFE Act or in the regulations that an applicant must submit evidence into the record documenting the date he or she first entered the U.S.

In response to the district director's reference to the applicant's failure to provide a birth document or official record of birth, counsel, on appeal, provides notarized affidavits from the applicant's father, [REDACTED] and [REDACTED] the applicant's aunt, both of whom attest to the applicant having been born on October 14, 1958 at Barisal, Bangladesh. The affiants indicate, as there was no civil or religious requirement at the time that such births be registered with any governmental authority or religious institution, no official written record or birth certificate exists to substantiate the applicant's birth. Counsel, on appeal, has also included a communication from a government official of the city of Barisal affirming that the People's Republic of Bangladesh does not by law mandate that a birth certificate be required for administrative purposes or for school attendance. The documentation provided by the applicant on appeal appears to have resolved any questions regarding the apparent absence of official birth records relating to the applicant.

It is concluded that any perceived inconsistencies and discrepancies cited in the notice of intent have either been adequately addressed and resolved by counsel and the applicant or are not material to the applicant's eligibility or 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 affidavits and letters attesting to his residence and employment during the period in question which tend to corroborate his claim of residence in the United States during the requisite period. Such affidavits, furnished by affiants willing to come forward and testify in this matter if necessary, may be accorded substantial evidentiary weight and, along with the extensive contemporaneous evidence provided by the applicant, are sufficient to meet his burden of proof of residence in the United States for the requisite period.

It should also be noted that, unlike many applicants for permanent residence under the LIFE program, the present applicant has actually provided contemporaneous evidence of residence consisting of *original* Air Mail envelopes addressed to the applicant, all of which include stamped postmark dates occurring well within the period in question.

The evidence provided by the applicant establishes, 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.