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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



Handwritten initials or signature

FILE:



Office: LOS ANGELES

Date:

JAN 31 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.

Handwritten signature of 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 District Director, Los Angeles, 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 she had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel argues that the director failed to consider the evidence presented by the applicant. Counsel provides additional affidavits in an effort to establish the applicant's continuous residence in the United States since before January 1, 1981 through May 4, 1988.

It is noted that the director, in denying the application, did not address the evidence furnished initially; and in response to the Notice of Intent to Deny, and did not set forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3. As such, the documentation throughout the application process will be considered on appeal.

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 through May 4, 1988, the applicant furnished the following evidence:

- An affidavit dated April 27, 1990 from [REDACTED] who indicated that the applicant resided at their home in Torrance, California from 1981 through 1988. [REDACTED] further indicated that during this time, the applicant was a housekeeper and a babysitter and worked with her at the swap meet.
- A notarized affidavit dated April 30, 1990 from [REDACTED] who indicated that the applicant has been residing with him in Compton, California since 1988.
- Notarized affidavits from [REDACTED] who attested to the applicant's residence in the United States since 1981.

Any document containing foreign language submitted to the Citizenship and Immigration Services shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3).

The applicant also submitted an affidavit from [REDACTED] written in the Spanish language without the required English translation. Therefore, this affidavit cannot be considered.

On February 18, 2004, the director issued a Notice of Intent to Deny, which informed the applicant that the documentation submitted was insufficient to establish continuous residence in the United States since before January 1, 1982 through May 4, 1988. The applicant was provided the opportunity to submit additional documentation. The applicant, in response, provided the following evidence:

- A notarized affidavit from [REDACTED] who attested to the applicant's residence in the United States since February 1983. The affiant based his knowledge on having been good friends with the applicant since that time.
- A notarized affidavit from [REDACTED] who attested to the applicant's residence in the United States since 1981. The affiant asserted that she met the applicant while recruiting children for the Head Start Program.
- A notarized affidavit from [REDACTED] who attested to the applicant's residence in the United States since August 1981. The affiant based his knowledge on having been good friends with the applicant since that time.
- A letter from Father [REDACTED], associate pastor of St. Emydius Church in Lynwood, California who indicated that the applicant has been a member of the church since 1982.

In this instance, the applicant submitted several affidavits and letters attesting to his residence and employment in the U.S. during the period in question. Affidavits in certain cases can effectively meet the preponderance of evidence standard. 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 documentation that has been furnished, including affidavits submitted by individuals most of whom have provided their current addresses and/or phone numbers and indicated their willingness to come forward and testify in this matter if necessary, 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 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.