



U.S. Citizenship
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Services

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LA

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.

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, California, 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 since before January 1, 1982 through May 4, 1988.

On appeal, counsel argues because the Notice of Decision failed to give any specific findings for the rejection of the affidavits, it can only result in speculation and conjecture. Counsel provides copies of documents that were previously submitted.

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 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).

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted the following evidence:

- A notarized affidavit from [REDACTED] who indicated that he has known the applicant since February 1981 and attested to the applicant's residence in California since "September 1979."
- A notarized affidavit from [REDACTED] who indicated that the applicant came to the United States from the [REDACTED] in 1979 and attested to the applicant's employment and residence at the [REDACTED] California from 1979 to January 1989.
- A letter dated January 28, 1989 from [REDACTED], secretary for Sky Villa Motel who indicated since September 14, 1979 he has known the applicant, and the applicant had worked and resided continuously at the [REDACTED] indicated that the applicant was employed as a cleaner/handyman.
- A copy of his son's September 4, 1987 birth certificate.
- A copy of his passport, which reveals an admission stamp into the United States as a B-2 visitor on July 24, 1979.

On March 8, 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. Counsel, in response, provided the following:

- An additional notarized affidavit from [REDACTED] who indicated that [s]he had been in daily contact with the applicant from August 1979 through December 1988. The affiant asserted that [s]he was the owner of the Sky Villa Motel and allowed the applicant and his family to reside at the motel from September 1981 through December 30, 1988.
- A notarized affidavit from [REDACTED] who attested to the applicant's residence at the Sky Villa Motel from September 1981 through December 30, 1988. [REDACTED] asserted that he employed the applicant periodically as a cleaner/handyman from 1981 to 1988.

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 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.