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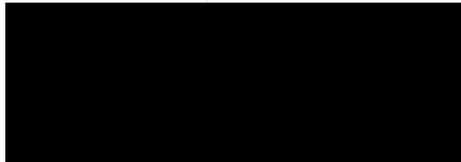
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, D.C. 20529



U.S. Citizenship
and Immigration
Services

L 2



FILE:



Office: LOS ANGELES

Date: JUN 10 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:

Self-represented

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, 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 from before January 1, 1982 through May 4, 1988.

On appeal, the applicant states that he has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 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 submitted 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).

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 through May 4, 1988, the applicant provided the following evidence throughout the application process:

- An employment letter from [REDACTED] who indicated that the applicant was in his employ as an agricultural worker from October 1981 to December 1984.
- An employment affidavit from [REDACTED] who indicated that the applicant was in his employ as a gardener and maintenance worker at his rental houses from 1985 through April 1991.
- An affidavit from [REDACTED] who attested to the applicant's residences in Ontario and Long Beach, California since 1981.

- An affidavit from [REDACTED] who attested to the applicant's irregular entry into the United States in October 1981.
- A letter from [REDACTED] who indicated that he first met the applicant in 1988 when they both were employed at the Old English Horse Ranch in Ontario, California. [REDACTED] asserted that he has remained good friends with the applicant since that time.
- A letter from [REDACTED] who indicated that she has known the applicant since 1987.
- A letter from [REDACTED] who indicated that he met the applicant in 1986 in Ontario, California.
- A letter from [REDACTED] indicated that the applicant was in his employ as a gardener from 1983 through 1985.
- A letter from [REDACTED] who indicated that he has known the applicant since 1982.
- An affidavit from [REDACTED] who attested to the applicant's residence in Ontario, California since July 1984. [REDACTED] asserted that he has remained good friends with the applicant since that time.
- An affidavit from [REDACTED] who attested to the applicant's residence in Ontario, California from 1981 to 1984. [REDACTED] asserted that she rented a room from him during that time.

The director determined that there were inconsistencies between the applicant's oral testimony and the documentation included in his record namely, the applicant asserted that he had never been arrested, but the FBI record reveals that the applicant had been charged with one count of battery. In addition, the applicant claimed he had no daughter, but listed [REDACTED] as a daughter on his Form I-687 application. The director issued a Notice of Intent to Deny dated June 3, 2004, informing the applicant of the inconsistencies.

In response, the applicant asserted that he [REDACTED] his own because at the time he was residing with her mother and "I considered her as my own daughter." Although, the applicant did not provide a copy of [REDACTED] birth certificate, his explanation regarding why he claimed her as his daughter on his Form I-687 application has been considered and is plausible.

The applicant submitted a certified copy of the police report dated November 28, 2000, which revealed that the applicant was charged with battery and was released with a Citation to Appear. The applicant also submitted a letter from the San Bernardino County Superior Court dated January 28, 2003, which indicated that after a diligent search of its indices, no case was located for the applicant. The applicant has not provided any documentation from the San Bernardino County Municipal Court, which handles misdemeanor offenses. Assuming, arguendo, the applicant was convicted of the battery charge; he would have only one misdemeanor conviction and would be still eligible for the benefit being sought.

In this instance, the applicant submitted evidence, including contemporaneous documents, which tends to corroborate his 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.