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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE: [REDACTED]

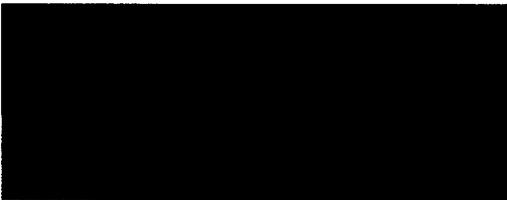
Office: Los Angeles

Date: MAR 09 2005

IN RE: Applicant: [REDACTED]

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.

A handwritten signature in black ink, appearing to read "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 (AAO) 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, counsel for the applicant submits a separate statement in which he asserts that, in denying his client's application, the district office failed to consider numerous third party affidavits submitted in support of the applicant's claim to continuous residence.

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, as claimed, the applicant furnished the following evidence:

- an affidavit from the applicant's parents, who attest to the applicant having entered the U.S. in 1979;
- an affidavit from [REDACTED] attesting to having known the applicant since July 1981 and to her husband having employed the applicant from June 1986 to September 1989;
- an affidavit from [REDACTED] who attests to the applicant having lived at her place of residence from October 1986 to December 1988;
- an affidavit from [REDACTED] who attests to the applicant and his family having lived at her place of residence in Santa Barbara, California, from November 1979 to August 1984;

- a declaration from [REDACTED] Records Clerk of Santa Barbara School/High School District, Santa Barbara, California, who asserts that, based on school attendance records, the applicant attended the Roosevelt School from September 8, 1980 to June 14, 1984;
- A school attendance and progress record, indicating the applicant's attendance at the Roosevelt School, Santa Barbara, California, from September 8, 1980 to March 25, 1985;
- A listing of the applicant's test scores on various academic subjects from May 1983 through April 1984;
- an immunization record from the Santa Barbara School District, indicating that the applicant was administered a series of vaccinations on November 21, 1980, February 1981, May 19, 1982, and May 18, 1983;
- a transcript from El Puente Community School, Santa Barbara, California, indicating the applicant's grades from 1987 [grade 9] through 1989 [grade 11];
- an affidavit from [REDACTED] who attests to having employed the applicant as an assistant to perform various agricultural duties [REDACTED], from 1987 to 1989; and
- an affidavit from [REDACTED] who attests to having known the applicant since 1981, and to having hired the applicant's father from 1985 to 1988 to perform gardening chores. The affiant also indicates that the applicant and his brother came weekly to assist their father with this work.

In the notice of intent to deny, the district director made reference to certain discrepancies in the applicant's documentation. Specifically, the director cited the aforementioned affidavits from [REDACTED] and from [REDACTED]. Upon examination, it is difficult to determine in what regard these affidavits are at variance with one another. The affidavit from Mr. [REDACTED] indicates the applicant assisted his father with gardening work at the affiant's residence from 1985 to 1988. According to Mr. [REDACTED] affidavit, the affiant was employed from 1987 to 1988 as an assistant to perform various agricultural and ranch duties for the affiant. On his Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (INA), completed August 9, 1989, the applicant specified that he worked for his father and for Enrique Patino performing gardening duties from 1985 to 1989 [the year in which the applicant's Form I-687 was completed]. Under the circumstances, there do not appear to be any contradictions or discrepancies between these two affidavits.

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. In an attempt to establish continuous unlawful residence since before January 1, 1982, as claimed, the applicant has provided considerable evidence including affidavits attesting to the applicant's residence since 1980 and 1981, employment affidavits, and contemporaneous evidence in the form of photocopied documents, transcripts, and immunization records affirming the applicant's school attendance during the period in question. The affidavits from employers as well as acquaintances, many of whom indicate their willingness to come forward and testify in this matter if necessary, may be accorded substantial evidentiary weight. These third-party

statements, along with the substantial contemporaneous evidence provided by the applicant, are sufficient to meet his 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.