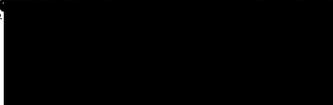


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U.S. Department of Homeland Security  
Citizenship and Immigration Services

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invasion of personal privacy



ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, D.C. 20536

FILE:  Office: BALTIMORE

Date: OCT 16 2003

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).

IN BEHALF OF APPLICANT:



**PUBLIC COPY**

INSTRUCTIONS: Attached is the decision rendered on your appeal. The file has been returned to the office that processed your case. If your appeal was sustained, or if your case was remanded for further action, the office will contact you. If your appeal was dismissed, you no longer have a case pending before this unit, and you are not entitled to file a motion to reopen or reconsider your case.

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 Acting District Director, Baltimore, and is now before the Administrative Appeals Office on appeal. This matter will be remanded for further action and consideration.

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 states that the applicant has provided evidence of her employment for the qualifying years and that the applicant should be granted resident status.

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).

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:

- (1) A letter from The Rome Group dated August 28, 1990 stating that the applicant had been employed by the company since 1980.
- (2) A letter from [REDACTED] who identified himself as the building manager at [REDACTED], stating that the applicant had resided at that address since March 15, 1980.
- (3) Copies of affidavits from [REDACTED] Nogales. The affidavits, which are all dated September 25, 1990, are virtually identical. Each of the affiants provides the addresses of the applicant's residences, lists the

applicant's employment since her arrival in the United States, and expresses that the applicant is his/her friend.

- (4) A copy of an affidavit from Noel Soderberg dated November 27, 1990 stating that the applicant was employed as a "household helper "from March 1980 to the present.
- (5) Copies of three family photos with notes explaining when and where the photos were taken as well as identifying the individuals in the photos.

The applicant also provided a photocopy of her passport which included an admission stamp verifying her February 23, 1980 entry and her B-2 visitor visa.

In addition, Citizenship and Immigration Services (CIS) records contain an application for Alien Employment Certification and a Petition for Prospective Immigrant Employee indicating that Ms. Soderberg petitioned for the applicant's services in the 1986-87 period. The documents indicate the applicant resided in Washington, D.C. during that period.

In rebuttal to the notice of intent to deny, the applicant provided the following evidence:

- (1) A letter from [REDACTED] dated March 10, 2003 stating that the applicant and her husband lived at [REDACTED] from February 1980 to 1984, and pointing out that they moved to [REDACTED] address [REDACTED]
- (2) Three original letters from [REDACTED] dated September 11, 1990 in which [REDACTED] states that the applicant worked for her since 1980. According to [REDACTED] statement, when she would leave town for an extended period of time, she and the applicant would coordinate schedules to allow her time off.
- (4) A letter from [REDACTED] dated August 28, 1990 in which [REDACTED] states that the applicant worked for her since 1980. [REDACTED] also provided information indicating that the applicant's husband was employed by her as a gardener from January 5, 1982 through June 1983. According to [REDACTED] prior to this employment, the applicant's husband was employed as a gardener by the Kuwait Embassy in Washington, D.C.

The applicant's son, [REDACTED], has also applied for permanent residence under the LIFE Act. He has presented evidence to establish that he attended school in Washington, D.C. from March 1980 to June 1989. While the

documentation does not specifically name his mother, it would seem likely that in 1980, when he was three years old, his mother was there to care for him.

The director conceded that the applicant established that she was in the United States in an unlawful status on May 23, 1980. Unlike the vast majority of legalization applicants in the original legalization program and now in the LIFE program, the applicant has provided official government proof of entry into the United States well before 1982. Thus, a determination of whether she thereafter resided continuously in the United States must at least commence with the knowledge that she definitely was in the United States in 1980. There is no indication in the record that the director checked Citizenship and Immigration Services' (CIS) computer records and verified that the applicant made subsequent documented departures and reentries to the United States. While it is possible the applicant reentered without inspection, the absence of such records of documented departures and entries tends to support the applicant's claim that she resided continuously in the United States after her entry in 1980. It is noted that the applicant is not a national of a nation contiguous to the United States, who might be more likely to make undocumented reentries into the United States.

The director asserted that in order to meet the standard of proof, the applicant must provide "credible, official documentation" that proves the applicant's eligibility apart from unsupported affidavits. According to the director, in the absence of supporting documentary evidence, affidavits are completely self-serving and lack credibility and objectivity. This finding is at odds with *Matter of E--M--*, supra. In that matter, the alien provided proof of entry and affidavits; no contemporaneous documentation relating to residence was provided.

The director correctly pointed out that the applicant's record lacks government-related documentation, as well as other supporting documentary evidence. However, counsel is also correct in stating that it is quite plausible that the applicant is unable to provide official documents, i.e. a copy of a lease, because she did not save such documents from over 20 years ago. Furthermore, as an illegal immigrant, the applicant may not have even had a lease.

The regulations at 8 C.F.R. § 245a.2(d) provide a list of documents that may establish residence and specify that "any other relevant document" may be submitted. The director did not establish that the information in the affidavits was inconsistent with the claims made on the application, or that it was false information. Affidavits in certain cases can logically 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 applicant's inability to submit additional contemporaneous documentation of residence is not found unduly implausible, considering all factors. The documents that have been furnished, including affidavits submitted by persons who are willing to testify in this matter, 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 director must ascertain whether the applicant is eligible for permanent residence in all other respects, such as an understanding of English and knowledge of history and government, or whether she is exempt from such requirements and whether the validity of the fingerprint checks and record checks has expired. The director shall complete the adjudication and render a new decision which, if adverse, shall be certified to this office.

**ORDER:** This matter is remanded for further action and consideration pursuant to the above.