



U.S. Citizenship
and Immigration
Services

L2

[Redacted]

FILE: [Redacted] Office: Houston

Date:

IN RE: Applicant: [Redacted]

AUG 10 2004

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:

[Redacted]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Houston, Texas, 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 failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988. In denying the application, the district director concluded the applicant's testimony at her adjustment interview was at variance with the information provided in her documentation, thereby casting doubt on the credibility of her claim to continuous residence in the U.S. since prior to January 1, 1982.

On appeal, the applicant, through her attorney, submits a brief and additional documentation in support of her 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. 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, as claimed, the applicant furnished the following evidence:

- An affidavit from [REDACTED], attesting to having met the applicant at her residence in Houston, Texas in May 1981. The affiant bases his knowledge on having painted the premises at that address;
- An affidavit from [REDACTED] attesting to having known the applicant since 1982. The affiant bases his knowledge on his friendship with the applicant;
- An form affidavit from [REDACTED] attesting to having known the applicant since April 1981. The affiant bases his knowledge on his friendship with the applicant;
- An affidavit from [REDACTED] who attests to having known the applicant since 1986;

- An affidavit from [REDACTED] who attests to having known the applicant since 1981;
- An affidavit from [REDACTED] who attests to the applicant having departed the U.S. for El Salvador to visit her family on December 10, 1987 and having returned to the U.S. on January 5, 1988;
- A form affidavit from [REDACTED] who attests to the applicant having resided in Houston, Texas since July 1981. The affiant bases his knowledge on having been the applicant's roommate since July 1981;
- Three form affidavits from acquaintances, attesting to having known the applicant since October 1981, November 1981, and December 1981, respectively;
- A letter from [REDACTED] attesting to having been acquainted with the applicant since February 1981. The affiant states that she was introduced to the applicant by a friend at their church; and
- An employment affidavit from [REDACTED] attesting to having employed the applicant in the capacity of housekeeper since July 1981 [the affidavit was executed September 18, 1990]. The affiant specifies that the applicant was paid in cash in compensation for her housework.

In his decision, the district director cited an apparent discrepancy between the applicant's testimony at her adjustment interview and the information provided in her documentation. This discrepancy, according to the district director, cast doubt on the credibility of her claim to continuous residence in the U.S. since prior to January 1, 1982. Specifically, the decision called attention to the fact that, at her March 4, 2003 adjustment interview, the applicant testified that she first entered the U.S. when she was 17 years old and that she was seven or eight years of age when she first attended elementary school education in El Salvador. The applicant stated at her interview that she remained in El Salvador for several months after leaving school, at which point she emigrated to the U.S. The applicant also testified to having remained in school for a period of *nine* years. As the applicant was born January 8, 1987, this, according to the decision, would indicate she did not leave school in El Salvador until 1983 and did not enter the U.S. until at least 1984.

On appeal, counsel responded to the district director's determination by providing a statement from the Director of the Urban Unified Mixed School of Comacaran. The statement from the school director indicated that the applicant "has studied in this institution the Ninth Grade of the Basic Education, in the year of 1980." This statement from the director would appear to be congruent with the applicant's testimony at her adjustment interview that she had remained at school for nine years.

The applicant, on appeal, also submits her own personal affidavit, in which she asserts that she had been extremely nervous and confused at her adjustment interview, and may have misstated her age at the time she first came to the U.S. However, the applicant insists that she did in fact enter the U.S. in July 1981, which she has consistently claimed throughout the application process. Counsel also provides a detailed affidavit from the applicant's father, who specifies that in June 1981, he consented to grant his authorization for his daughter, who was then 14 years old and a minor, to depart El Salvador for the U.S. [It is noted that this

period was characterized by intensive guerrilla warfare and armed conflict in that Central American nation, and it was not uncommon for residents to send their children out of the country in the interest of their safety].

The applicant, on appeal, has attempted to account for apparent inconsistencies during her adjustment interview as to her age at the time of entry into the U.S. The detailed affidavit from the applicant's father lends credibility to her claim to have entered the U.S. in July 1981. Moreover, upon examination of the transcript of the applicant's adjustment interview, there appears to be no basis for the district director's finding that the applicant testified to having been seven or eight years old when she began her education in El Salvador. The applicant's attempt to account for what transpired during her adjustment interview and to resolve any inconsistencies is augmented by credible supporting evidence. As such, the applicant, on appeal, has satisfactorily resolved any perceived discrepancies in her claim and documentation.

The applicant has submitted at least twelve affidavits attesting to her residence as well as her employment in the U.S. during the period in question. It should be emphasized that 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. In this case, the affidavits furnished by affiants who have provided their addresses as well as their current phone numbers and have 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 evidence 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.