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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

22

FILE:

Office: Sacramento

Date: DEC 22 2004

IN RE:

Applicant:

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:

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. 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, San Francisco, 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 she had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, or that she had established her continuous physical presence in the U.S. during the period between November 6, 1986 and May 4, 1988.

On appeal, the applicant submits a separate statement, in which she stated that the evidence she submitted in support of her claim to residence was not given proper consideration by the examining Citizenship and Immigration Services (CIS) officer at the time of her adjustment interview.

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 must also establish continuous physical presence from November 6, 1986 through May 4, 1988. 8 C.F.R. § 245a.16.

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 (5<sup>th</sup> 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:

- Photocopies of a State of California birth certificate, an Admission Record from the San Bernardino County Medical Center, and a County of [REDACTED] Abstract of Birth, all of which indicate the applicant's son was born in San Bernardino, California, on July 6, 1981;
- A San Bernardino County Public Health Department health record pertaining to the applicant's son, which lists the following medical appointment dates: August 20, 1981, April 12, 1982 and April 15, 1982;

- A certificate of baptism from [REDACTED] California, indicating the applicant's son, born in San Bernardino, California on July 6<sup>th</sup>, 1981, was baptized at that religious institution on September 25, 1982.
- A declaration from [REDACTED] which makes reference to having prepared 1983 and 1984 federal and state income tax returns for the applicant and her spouse;
- An affidavit from [REDACTED] who attests to the applicant and her spouse having resided with her at her place of residence in Chino, California from February 1986 to November 1988;
- A letter from [REDACTED] California, who attests to the applicant having been employed at her home as a caretaker from 1981 until 1988;
- A letter from [REDACTED] who asserts the applicant has been an active member of his parish since 1981; and
- A letter from [REDACTED] Assistant Manager at [REDACTED] who asserts that the applicant and her husband maintained a savings account at that institution from August 14, 1984 until March 18, 1985.

In this instance, the applicant submitted affidavits and third-party statements attesting to her residence and employment in the U.S. during the period in question. Affidavits in certain cases can effectively meet the preponderance of evidence standard. The director has not established that any of the information in the affidavits and statements submitted by the applicant was false or inconsistent or at variance with the claims made by the applicant on the application. 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, including affidavits submitted by persons many of whom 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.

It should also be noted that, unlike many applicants for permanent residence under the LIFE program, the present applicant has actually provided considerable contemporaneous evidence of residence in the form of photocopies of birth and baptismal certificates along with public health medical appointment records.

The third-party affidavits provided by the applicant, accompanied by contemporaneous evidence, support 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.