

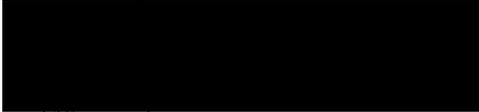
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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LA

DEC 23 2004

FILE:



Office: SACRAMENTO, CALIFORNIA

Date:

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. 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

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Interim District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The Interim District Director determined that the applicant had not established that she resided in the United States in a continuous unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. Therefore, the Interim District Director concluded the applicant was ineligible for permanent resident status under the LIFE Act and denied the application accordingly. *See Interim District Director's Decision* dated January 17, 2004.

On appeal the applicant states that she presented all the documents she has in her possession. She further states that she applied for benefits pursuant to the LIFE Act only after she was sure that she met all the requirements for adjustment of status. In a statement submitted previously the applicant stated that she kept all her receipts, check stubs and papers, thinking that they would be useful at some point.

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).

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).

The applicant is a class member in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (the Act). On the Form I-687 application, the applicant indicated that she first entered and began residing in this country in May 1981.

In an attempt to establish continuous unlawful residence since before January 1, 1982, as claimed, the applicant furnished the following affidavits along with other contemporaneous documentation:

- An affidavit signed by [REDACTED] who provided her address and stated that she was acquainted with the applicant as a friend. [REDACTED] further indicated that he had personal knowledge that the applicant resided in the United States since 1981 because he rented his house to her since her arrival in 1981;

- An affidavit from [REDACTED] who attests to the applicant having been in the United States since February 1981. The affiant bases her knowledge on having been a friend to the applicant and
- Rent receipts from 1982, 1983, 1984 and 1985.

On appeal the applicant re-submits the documentation previously submitted and reiterates her claim to have entered the United States in 1980, and to have continuously resided in this country through May 4, 1988.

In this case, the applicant has submitted affidavits attesting to her residence in the United States during the requisite period. Affidavits in certain cases can effectively meet the preponderance of evidence standard. The Interim District Director has not satisfactorily 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 and letters furnished by affiants and acquaintances who have provided their current addresses, 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 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 Interim District Director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.