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

U.S. Citizenship and Immigration Services

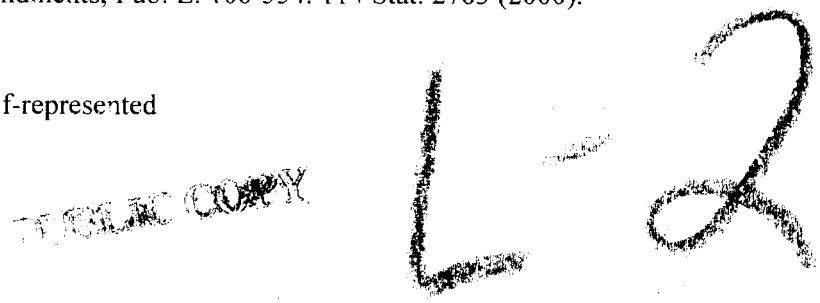
[redacted]

FILE: [redacted] Office: Los Angeles Date: DEC 27 2004

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: 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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Los Angeles, 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.

On appeal, the applicant asserts that the evidence she has provided should serve to establish her continuous residence in the U.S. since prior to January 1, 1982, and requests that her application be reconsidered and the district director's decision be set aside. In addition, the applicant submits a separate statement 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:

- Photocopies of 9 Air Mail envelopes addressed to the applicant or sent by the applicant, carrying marginally-legible postmark dates from 1984 through 1986;
- 3 Registered mail receipts made out by the applicant, carrying the following date-stamps: November 5, 1980, December 18, 1980, May 4, 1983 and January 4, 1984;
- an affidavit from [redacted] attesting to the applicant having performed babysitting duties for her since May 1987;
- an affidavit from [redacted] attesting to the applicant having resided in Los Angeles, California since late 1980; and
- an affidavit from [redacted] attesting to the applicant having performed babysitting duties for the affiant from June 1980 to May 1987.

In the notice of intent to deny, the district director made reference to the presence of certain inconsistencies in the applicant's documentation. Specifically, it was noted that the applicant's addresses listed on some of the aforementioned photocopied Air Mail envelopes did not coincide with the addresses provided on her application Form I-687. A further inconsistency noted by the district director concerns the applicant's departures from the U.S. While there is no indication on the applicant's I-687 of any departures from the U.S. during the period in question, the applicant purportedly informed the examining officer at her adjustment interview that she "had absences from the U.S. each year for three weeks to a month."

On appeal, the applicant submits a personal statement in which she attempts to address the inconsistencies referenced in the notice of intent to deny. Regarding her departures from the U.S., the applicant asserts on appeal that the absences in question did not occur until *subsequent* to 1990, and that it was these absences to which she referred at the time of her adjustment interview. The applicant maintains that her I-687 application, which does not indicate any absences since her initial entry, is accurate and truthful. An examination of the examining officer's notes at the applicant's adjustment interview would appear to support the applicant's statement on appeal. The interviewer's notation regarding the applicant having "left every year for 3 weeks to one month" is followed by references to passports issued May 1991 and July 1998, respectively, with each passport carrying several successive stamped dates of entry. There is no further indication based on the interviewer's notes or any additional evidence in the record that these absences occurred during the period from January 1, 1982 through May 4, 1988. As such, the applicant appears to have resolved this inconsistency concerning her departures from the U.S.

The applicant, on appeal, does not address the inconsistency reference in the notice of intent regarding the fact that her addresses as listed on photocopied Air Mail envelopes do not coincide with those indicated on her I-687 application. The record discloses that, on her I-687, the applicant lists her address from June 1980 to May 1987 as 7307 10th Avenue, Los Angeles, California. Yet, as noted by the district director, several of the photocopied envelopes show the applicant's address during this period as: 4060 Stevely Avenue, Apt. 12, Los Angeles, California.

While conceding the district director's observations regarding this apparent inconsistency, it must also be noted that, out of a total of nearly 10 photocopied postmarked Air Mail envelopes provided by the applicant, only *three* show the applicant as residing at Stevely Avenue. The remainder list the applicant's address as 7307 10th Avenue, which is entirely consistent with the information provided on the applicant's I-687. It is also noted that geographically, *both* addresses are located within the confines of the greater Los Angeles metropolitan area, where the applicant has consistently claimed to reside since her entry to the U.S. in May 1980. Accordingly, while the applicant has not attempted to address or resolve this apparent discrepancy, it does not, in and of itself, appear to be of sufficient magnitude to negate the applicant's claim to continuous residence in the U.S. during the period in question.

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 in this case has provided several affidavits supporting her claim to residence and employment in the U.S. since 1980. Such affidavits, furnished by affiants willing to come forward and testify in this matter if necessary, may be accorded substantial evidentiary weight and, along with the extensive contemporaneous evidence provided by the applicant, are sufficient to meet his 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 consisting of photocopies of postmarked Air Mail envelopes, along with registered mail receipts, all of which carry dates occurring within the period in question.

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.