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U.S. Citizenship
and Immigration
Services

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[redacted]

NOV 30 2004

FILE: [redacted] Office: Los Angeles Date:

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:

[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

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

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 asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant submits new affidavits in support of her claim of residence in this country.

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. 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).

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. *See Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989).

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).

In an attempt to establish continuous unlawful residence since before January 1, 1982, as claimed, the applicant furnished evidence including two affidavits of residence, employment letters, a letter from the local utility company, a letter from a church official, and two separate lease agreements. The testimony within this supporting documentation is consistent with the applicant's listing of her places of residence and employment on the Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (INA). Furthermore, the applicant's contention that her inability to produce additional contemporaneous evidence of residence is due to her being an illegal alien is considered to be a reasonable explanation in these circumstances. In addition, the applicant provides two additional affidavits to further corroborate her claim of residence on appeal.

In this instance, the applicant submitted evidence that tends to corroborate her claim of residence in the United States during the requisite period. The district director has not established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. 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 affidavits of residence and other supporting documents that have been furnished 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.

However, at issue in these proceedings is whether the applicant continuously resided in an **unlawful status** for the requisite period. The district director failed to consider this issue in its entirety in denying the application and such issue must now be examined to determine the applicant's eligibility for adjustment to permanent residence under section 1104(c)(2)(B) of the LIFE Act. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center [or other office] does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States,* 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

Section 1104(c)(2)(B) of the LIFE Act states:

> (i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.
>
> (ii) Nonimmigrants - In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, such alien must establish that the period of authorized stay as a nonimmigrant expired before such date through the passage of time <u>or</u> that the alien's unlawful status was known to the Government as of such date.

The word "Government" means the United States Government. An alien who claims his unlawful status was known to the Government as of January 1, 1982, must establish that prior to January 1, 1982, documents existed in one or more government agencies so, when such documentation is taken as a whole, it would warrant a finding that the alien's status in the United States was unlawful. *Matter of P-*, 19 I. & N. Dec. 823 (Comm. 1988).

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 on February 12, 1990. On the Form I-687 application, the applicant indicated that she entered the United States with a B-2 nonimmigrant visitor's visa in October 1981, with a period of authorized stay until December 31, 1981. However, the applicant failed to provide copies of her Colombian passport or any other evidence to corroborate her claim that her period of authorized stay in this country expired on December 31, 1981. A review of Immigration and Naturalization Service's, or the Service's (now Citizenship and Immigration Services, or CIS) practices and procedures in effect on the date the applicant claimed to have entered this country reveals that aliens possessing a B-2 nonimmigrant visitor's visa were granted a six month period of authorized upon entry to the United States. As the applicant claimed to have entered the country with a B-2 visitor's visa in October 1981, she would have been granted a period of authorized stay until April 1982. Without conclusive evidence that the applicant's period of authorized stay had expired prior to January 1, 1982, it cannot be concluded that she was in an unlawful status through the passage of time as of such date.

Now it must be determined whether the applicant had violated her lawful status as a B-2 non-immigrant visitor prior to January 1, 1982, and whether such unlawful status was known to the Government as of this date. On her Form I-687 application, the applicant indicated that she violated her B-2 visitor status by engaging in unauthorized employment in the housekeeping department of St. Joseph's Hospital in Houston, Texas beginning in December 1981. In support of this claim, the applicant submitted an employment letter

signed by who indicated that the applicant was employed by St. Joseph's Hospital in its housekeeping department from December 1, 1981 to March 17, 1984. While the applicant may very well have been in an unlawful status by working without authorization prior to January 1, 1982, the record contains no evidence that such unlawful status was known to the Government as of this date pursuant to *Matter of P*, 19 I. & N. 823 (Comm. 1988). Thus, we cannot conclude the applicant was in an unlawful status which was known to the Government as of January 1, 1982, as a result of unauthorized employment.

Congress provided only two ways in which an applicant who had been admitted as a nonimmigrant could establish eligibility for adjustment to permanent residence under section 1104(C)(2)(B)(ii) of the LIFE Act. The first was to clearly demonstrate the authorized period of stay expired prior to January 1, 1982. The second was to show that, although the authorized stay had not expired as of January 1, 1982, the applicant was nevertheless in an unlawful status which was known to the Government as of that date. In doing so Congress acknowledged it was possible to have an authorized stay and yet still be unlawful due to another reason, such as illegal employment. However, the LIFE Act very clearly states the unlawfulness had to have been known to the Government as of January 1, 1982.

The statements of counsel on appeal have been considered. Nevertheless, in this case the applicant has failed to establish that her authorized stay expired prior to January 1, 1982. In addition, the applicant has failed to demonstrate that she was otherwise in an unlawful status that was known to the Government as of January 1, 1982. The applicant has, therefore, failed to establish that she resided in continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act.

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. 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). The applicant has failed to meet this burden.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.