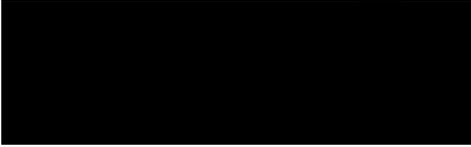




U.S. Citizenship  
and Immigration  
Services



FILE:



Office: Los Angeles

Date:

OCT 08 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

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**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

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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, 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 reaffirms her claim to have continuously resided in the U.S. since 1980, and submits 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 (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:

- a photocopied Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (INA), which was purportedly signed by the applicant on July 19, 1993;
- An affidavit from Rafael Rivera, owner of [REDACTED] attesting to the applicant having worked for him since 1981;
- An affidavit from [REDACTED] attesting to the applicant having worked for her father, Jose [REDACTED] in Paramount, California, since 1981
- Photocopies of a semi-monthly time cards signed by [REDACTED] indicating the applicant's employment during the following pay periods: May 15, 1981 to May 30, 1981, May 15, 1982 to May 30, 1982, May 15, 1983 to May 30, 1983, May 15, 1984 to May 15, 1984 and May 15, 1985 to May 30, 1985;
- An affidavit from [REDACTED] sister of the applicant, who attests to the applicant having resided in the U.S. since 1980;

- An affidavit from [REDACTED] who attests to having been good friends with the applicant since 1980. The affiant also indicates she accompanied the applicant on a trip to Mexico from May 10, 1987 to May 25, 1987;
- A photocopied State of California birth certificate indicating the applicant's son, [REDACTED] was born September 11, 1986 at [REDACTED] in Redlands, California;
- A photocopy of an envelope having been addressed to the applicant, which carries a postmark date of March 9, 1980;
- An affidavit from [REDACTED] in which the affiant attests to having employed the applicant as a housekeeper and nanny from January 1982 through January 1985; and
- An affidavit from [REDACTED] in which the affiant attests to having known the applicant since 1980. The affiant bases his knowledge on having hired the applicant to perform various employment at his apartment complex; and
- A letter dated July 12, 2001 from [REDACTED] California, attesting to the applicant and her family having attended his church for approximately 19 years.

In denying the application, the district director cited a discrepancy in the evidence regarding the applicant's identity. Specifically, some of the documentation provided featured the applicant's name as [REDACTED] rather than her actual name of [REDACTED]. According to the district director, this discrepancy cast doubt on the credibility of the applicant's claim to continuous residence in the U.S. since prior to January 1, 1982.

In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that the applicant was in fact the person who used that name. To meet the eligibility requirements, documentation must be submitted to prove the common identity, i.e. that the assumed name was in fact used by the applicant. 8 C.F.R. § 245a.2(d)(2)(i). Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to the affiant under the assumed name in question will carry greater weight. 8 C.F.R. §245a.2(d)(2)(ii).

In this case, the applicant submits a personal affidavit in which she attempts to address and resolve the documentary discrepancy concerning her actual first name. According to the applicant, although [REDACTED] was in fact her baptismal name, she has always been called [REDACTED] by her family, who preferred the latter. Furthermore, at *item 4* of her application Form I-687, where an applicant is instructed to list "other names used or known by," the applicant had duly indicated that she had also been known by the first name of [REDACTED]. In addition, the applicant has provided affidavits from [REDACTED] and from [REDACTED] both of whom indicate that the applicant is also known by the name of [REDACTED]. Also included in the applicant's documentation is an affidavit from [REDACTED] in which the affiant specifies that, since her arrival in the U.S. in 1981, the applicant has used both [REDACTED] as alternative first names. Attached to [REDACTED] affidavit is an identifying photograph of the applicant.

In attempting by means of her own personal affidavit to resolve any and all questions concerning her alleged use of an assumed name, and in providing credible supporting evidence from numerous affiants, the applicant

has satisfactorily managed to resolve any perceived discrepancies in her claim and documentation regarding the issue of her identity, as well as having met the common identity requirements as set forth in 8 C.F.R. § 245a.2(d)(2).

The applicant has submitted at least seven 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.

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 time cards and postmarked envelopes.

The affidavits provided by the applicant, along with considerable 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.

**ORDER:** The appeal is sustained.