



U.S. Citizenship
and Immigration
Services

2005-08-23 10:00 AM
U.S. Citizenship and Immigration Services
Division of Personal Privacy

PUBLIC COPY



L2

FILE:



Office: LOS ANGELES

Date:

AUG 23 2005

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. Any further inquiry must be made to that office.

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 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.

On appeal, the applicant asserts that there was a miscommunication between her and the interviewing officer. The applicant reiterates her statement submitted in response to the Notice of Intent to Deny and requests that her application be reconsidered.

It is noted that the director, in denying the application, did not address the evidence furnished initially and did not set forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3. As such, the documentation submitted throughout the application process will be considered on 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. 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 through May 4, 1988, the applicant provided the following evidence throughout the application process:

- A dental bill reflecting the applicant's visits from November 4, 1981 through March 22, 1984. The bill listed the applicant's address as [REDACTED]
- An envelope postmarked April 17, 1982 and addressed to the applicant at [REDACTED] California.
- A receipt dated December 7, 1981 from See & Buy Discount Store in Santa Ana, California.
- Four credit card receipts dated August 3, 1984, December 13, 1985, May 20, 1986 and February 11, 1987.

- An affidavit dated March 31, 1990 from [REDACTED], a brother, who indicated that the applicant resided with him in Santa Ana, California and was employed as a housekeeper since December 1980.

The director, in her Notice of Intent to Deny dated June 21, 2004, informed the applicant that her contradictory statements created a credibility issue, which extended to all the evidence submitted. Specifically, the director found that the applicant's claim at the time of her interview that all of her brothers were American citizens at the time of her entry contradicted her Form I-687 application dated April 18, 1990 on which she indicated that none of her siblings were American citizens. The director also noted that the address listed on the dental bill differed from the addresses listed on the applicant's Form I-687 application.

The applicant, in response, asserted that at the time of her interview there may have been a miscommunication between her and the interviewing officer as she did not state that her brother were American citizens as the time of her entry into the United States, but rather "at the present time my brothers are now American citizens."

Regarding the address listed on the dental bill, the applicant asserted that she was not old enough to pay medical bills and her older brother was responsible for paying the dental bill and, therefore, the bill listed his address.

On appeal, the applicant asserts that at the time her Form I-687 application was filed, her brothers were permanent residents. The applicant further asserts that she has more than one brother and an older brother who resided at a different address than where she lived, paid the dentist bills.

The issue of whether the applicant's brothers were U.S. citizens or permanent residents is not material to whether the applicant was in the United States during the requisite period, as is not a basis for establishing eligibility. In any event, the AAO finds no contradictory statements regarding their immigration status. The applicant's statement regarding the different address listed on the dental bill has been considered and is plausible.

In this instance, the applicant submitted evidence, including contemporaneous documents, which 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 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.

The documentation 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 district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.