



U.S. Citizenship
and Immigration
Services

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invasion of personal privacy**



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FILE:  Office: Los Angeles

Date: **JAN 24 2005**

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:



PUBLIC COPY

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, 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 not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, counsel for the applicant asserts that the district office's decision denying his client's application failed to fully address or take into consideration the applicant's detailed response to the notice of intent to deny. Upon review by the AAO, it was determined that counsel's assertion is justified. Accordingly, the applicant's response to the notice of intent shall be duly evaluated and incorporated into the discussion below.

On December 1, 2004, the AAO sent counsel a communication indicating that, in compliance with counsel's request of June 1, 2004, a copy of the record of proceedings (ROP) relating to the applicant was being provided to counsel. On December 29, 2004, in response to the AAO's communication of December 1, 2004, counsel forwarded a subsequent brief in support of the applicant's appeal. Counsel's subsequent appeal brief will also be taken into consideration in adjudicating the appeal and rendering a decision.

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 CIS 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

According to the district director's notice of intent to deny, it was determined that, upon examination, serious discrepancies existed in the applicant's testimony, applications and supporting documentation. In her testimony at the time of her adjustment interview, as well as on her Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (INA), the applicant specified that her last departure from the U.S. occurred in August 1986, when she visited her brother, who was ill. Yet, the record contains an I-130 petition for alien relative on behalf of the applicant dated December

17, 1991, which indicates the applicant gave birth to two sons *in Mexico* on January 14, 1983 and May 14, 1984, respectively. These children, however, are *not* mentioned on either the applicant's I-687 application, which she signed on April 5, 1990, or on her subsequently-submitted LIFE application, completed and signed by the applicant on December 12, 2001.

In response to the notice of intent to deny, the applicant acknowledges having deliberately omitted listing her sons or her spouse on her previous applications, stating her decision to do so was based on the erroneous advice on the part several individuals: a notary ("notario"), [REDACTED] who had assisted her with preparing the application, an unspecified Service officer at the El Centro, California office of the Immigration and Naturalization Service or the Service (now, Citizenship and Immigration Services or CIS), and several unnamed "immigration advisors." The applicant's account regarding the alleged advice proffered by these individuals cannot be confirmed based on the record of proceedings. Nevertheless, the applicant, in her response statement, clearly expresses regret over her decision to omit this information. In her rebuttal to the notice of intent to deny, the applicant specifies that in departing the U.S. in January 1983 and, again, in May 1984, to give birth to her two sons, she was absent for no more than two weeks during each departure. Given the short duration of these absences, the omission of the information in question does *not* appear to have had an adverse impact on the applicant's claim to continuous residence in the U.S. during the period in question.

An additional discrepancy referenced in the notice of intent concerns the applicant's places of residence during the period from her purported entry to the U.S. in 1980 (or 1981) until May 4, 1988. According to her I-687 application, she resided in Las Vegas, Nevada from 1981 to 1990. However, affidavits included in the file which were submitted on the applicant's behalf attest to her having resided in Indio, California and in Calexico, California during the *same* time period. In response to the notice of intent, the applicant stated that, for reasons related to education and employment, she alternated between residing in Calexico, California with a friend and traveling to Las Vegas, Nevada, where she resided with other acquaintances. In support of her claim to having bifurcated residence during this period, the applicant refers to her I-687 application, in which she appears to indicate having resided in both states since the early 1980's. In addition, the applicant submits third-party affidavits attesting to her having resided part-time in California and the remainder in Las Vegas during the period in question. Counsel, on appeal, asserts that the aforementioned affidavits support the applicant's account regarding her part-time residence in these two separate geographical localities. Upon examination of the evidence, it appears entirely likely that, for personal and professional reasons relating to her tax preparation enterprise, the applicant did in fact intermittently resided in both California and Las Vegas during these years.

The apparent discrepancies and inconsistencies raised in the notice of intent to deny regarding the applicant's claim and documentation have either been satisfactorily resolved by counsel and the applicant, or do not, in and of themselves, appear to have been 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.

In an attempt to establish continuous unlawful residence since before January 1, 1982, as claimed, the applicant furnished evidence including affidavits from acquaintances attesting to the applicant's residence in the U.S. since 1980 and 1981; third-party letters attesting to the applicant's active and long-standing involvement in community affairs since 1984; savings account entries; store receipts and purchase orders; a physician's letter indicating his having treated the applicant from 1981 to 1984; a 1982 academic test evaluation in an accountancy course; and a 1983 monthly consultant statement from a cosmetics firm.

The documents that have been furnished, including affidavits and third-party statements submitted by persons many of whom are willing to testify in this matter, 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 her residence during the period in question.

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

ORDER: The appeal is sustained.