

Security information should be withheld to prevent clearly unwarranted invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



JAN 27 2005

FILE:

Office: Los Angeles

Date:

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:



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 sustained.

The district director determined that the applicant had not submitted sufficient documentation to demonstrate that she had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The director also determined that the applicant had not continuously resided in this country during the requisite period because she had been deported from the United States on November 21, 1983. Therefore, the director concluded that the applicant was ineligible to adjust to permanent residence under the LIFE Act and denied the application.

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.

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).

In addition, an alien cannot be considered to have maintained continuous residence in this country if he or she departed the United States during the requisite period and such departure was based on an order of deportation. *See* 8 C.F.R. § 245a.15(c)(3)

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 an affidavit of residence, three employment letters, four photographs, a letter from the Social Security Administration referencing wages earned by the applicant in 1981, a Social Security Administration earnings statement, a State of California Birth Certificate reflecting the birth of the applicant's son on March 11, 1985, a court order from the California Superior Court in Orange County dated June 27, 1986, four photocopied customer receipts for money orders issued by the Bank of America, a letter dated July 28, 1986 from the District Attorney's Office of Orange County, California, a letter from the Social Services Agency of Orange County, California, five photocopies of postmarked envelopes, a paycheck stub, ten Form W-2, Wage and Tax Statements, and Federal and California tax returns.

In the notice of intent to deny issued on February 9, 2004, the district director determined that the applicant had been deported from the United States by the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) on or about November 21, 1983, and that such deportation seemingly broke her period of continuous residence in this country during the requisite period. While the Federal Bureau of Investigation printout contained in the record indicates that the applicant was deported on the date cited by the district director, the record contains no conclusive evidence such as an Order to Show Cause, an Order from an Immigration Judge, or a duly executed Warrant of Deportation to reflect that she was deported from this country on November 21, 1983. Although a review of CIS computer records reflects that the applicant was apprehended by the Service on November 21, 1983, such records do not specify the reason for this apprehension and fail to demonstrate that she was subsequently deported from the United States. Consequently, as the record contains no definitive evidence to show that the applicant was deported from this country during the period from January 1, 1982 to May 4, 1988, her continuous residence in the United States for this period cannot be considered to have been broken as a result of her departing this country under an order of deportation.

In addition, the district director questioned the veracity of the applicant's claim of residence in this country because the Social Security Administration earnings statement submitted by the applicant did not reflect any wages earned by her in 1982 and 1983, despite the fact that she had provided Form W-2, Wage and Tax Statements, showing earnings in each of those years. However, the applicant subsequently submitted a letter dated February 25, 2004 from the Social Security Administration, which reflects that the applicant earned wages subject to Social Security earnings tax in both 1982 and 1983. It must be noted that the applicant previously submitted another letter from the Social Security Administration referencing wages earned by her in 1981. Therefore, the applicant must be considered to have overcome the deficiencies regarding her claim of residence as cited by the district director in the notice of intent to deny.

In this instance, the applicant submitted evidence, including contemporaneous documents and government records, 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.