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U.S. Citizenship
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Services

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JAN 27 2005

FILE:



Office: Sacramento

Date:

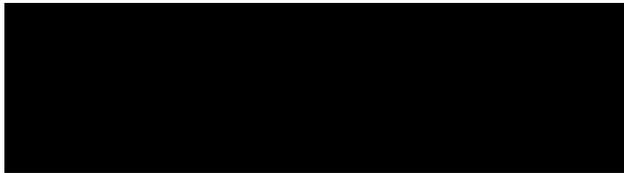
IN RE:

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, San Francisco, California, 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 from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant has submitted sufficient evidence to support her claim of continuous residence in this country since prior to January 1, 1982. Counsel contends that the purported discrepancy regarding the applicant's date of entry into the United States arose from a miscommunication.

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).

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).

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).

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 for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (INA) on April 19, 1990. In an attempt to establish continuous unlawful residence since before January 1, 1982, as claimed, the applicant furnished an affidavit of residence.

The record shows that the applicant subsequently submitted her Form I-485 LIFE Act application on May 1, 2002. The applicant submitted two affidavits of residence, a copy of her son's immunization record, three photographs, and a postmarked envelope.

In the notice of denial issued on January 17, 2003, the district director questioned the veracity of the applicant's claimed entry into the United States because of testimony she provided at the interview relating to her LIFE Act application on March 11, 2003, "...did not appear to be credible." However, an examination of the interviewing officer's notes reveals that the applicant made no admission or statement that could be perceived to directly

contradict or conflict with her claim of residence in this country for the requisite period. In addition, such testimony was provided to describe events that occurred over twenty-one years ago, a significant and considerable period of time. The explanation offered on appeal that any purported discrepancy regarding the applicant's residence in the United States is the result of a miscommunication is considered reasonable under these circumstances and appears to have credibly resolved the questions raised by the district director regarding applicant's entry into this country prior to January 1, 1982. In addition, the applicant's explanation that she does possess further documentation to support her claim of residence during the requisite period because she was an illegal alien is also considered to be reasonable under these circumstances.

In this instance, the applicant submitted evidence, including affidavits and 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.