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U.S. Citizenship  
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Services



JAN 27 2005

FILE:

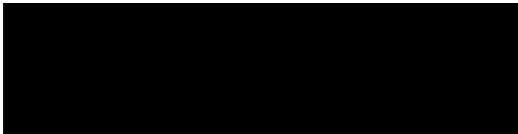
Office: Dallas

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 Interim District Director, Dallas, Texas, 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 requests that the district director's decision be set aside, asserting that the applicant has submitted substantial documentation to establish her 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).

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 in support of her claim to continuous residence in the U.S. during the period in question, including eight (8) affidavits of residence and five (5) letters of employment.

In the decision, the district director references two affidavits of residence from acquaintances of the applicant which were subsequently submitted in response to the notice of intent to deny:

- An affidavit from [REDACTED] who attests to having been acquainted with the applicant since April 1980; and
- An affidavit from [REDACTED] who attests to the applicant having provided care for the affiant's two children from February 1983 to November 1984.

According to the decision, neither affidavit was verifiable. However, upon examination, both affiants in this case provide not only their current addresses but their phone numbers as well. In addition, both have indicated their willingness to come forward and be contacted in this matter if necessary. Nor is there any indication contained in

the record of proceedings of any attempts made by Citizenship and Immigration Services (CIS) to actually verify the information contained in affidavits. This does not support the finding set forth in the notice of decision that these two affidavits provided by the applicant were not verifiable.

The decision also focuses on letters of employment provided by the applicant which are approximately 15 years old and, according to the district director, are therefore unverifiable. An examination of the record indicates that some of the applicant's employment letters date from 1988 and 1990. However, at the time the applicant previously applied for class membership, these documents were accepted by this agency as evidence of her employment in the U.S. It is difficult to discern why CIS would accept this evidence in that prior circumstance but not in the context of the current LIFE proceedings. Moreover, as noted in the previous discussion, there is no indication in the record of any actual verification attempts by CIS in connection with the affidavits provided by the applicant.

In this instance, the applicant submitted considerable evidence tending to corroborate his 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, including affidavits submitted by persons who have indicated their willingness to come forward and 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.

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.