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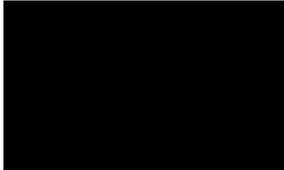
**U.S. Citizenship
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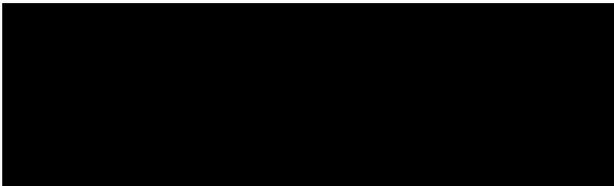
Applicant:



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:



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 director, in denying the application, determined that the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act) due to her conviction of prostitution. The director also 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 documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel provides a brief disputing the director's decision, along with additional documents and copies of previously submitted documents

It is noted that counsel had put forth a Freedom of Information Act request, which was subsequently complied with by Citizenship and Immigration Services.

It is noted that the director, in denying the application, did not address the evidence furnished initially, and in response to the Notice of Intent to Deny, 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 in the United States since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence throughout the application process:

- Statements from [REDACTED] and [REDACTED] who attested to the applicant's resident in Los Angeles, California since June 1978. The affiants asserted that the applicant resided with them when she first arrived in the United States and have remained in contact with the applicant since that time.

- Her daughter's February 18, 1980 birth certificate and her August 30, 1980 Certificate of Baptism.
- Her son's May 21, 1981 birth certificate and his April 4, 1982 Certificate of Baptism.
- A hospital discharge form issued on May 24, 1981.
- A food stamp notice of eligibility from the Los Angeles Department of Social Services dated July 1, 1981.
- Her son's immunization record, which reflects vaccinations given in 1982, 1984, 1985, and 1986.
- A California WIC Program authorization card for 1982.
- Several forms from the Los Angeles County Department of Public Social Services regarding the applicant's eligibility for Aid for Families with Dependent Children (AFDC) dated May 26, 1981, July 12, 1982, June 8, 1983, July 19, 1983, July 20, 1984, December 7, 1984, February 11, 1985, March 11, 1985, August 5, 1985
- A Pacific Telephone deposit receipt dated July 27, 1983.
- A month-to-month rental agreement dated May 30 1985 for property at [REDACTED] Los Angeles, California.
- A food stamp issuance card from the Los Angeles County issued on July 27, 1985.
- Several immigration documents pertaining to the applicant's apprehensions for illegal entry into the United States on April 7, 1986 and July 23, 1988.
- An Immigration Bond, Form I-352 issued on April 14, 1986 on behalf of the applicant, and subsequently canceled on December 11, 1989.
- Several envelopes postmarked in 1986 and 1987 to the applicant's address in Los Angeles, California.
- A check cashing identification card issued on May 15, 1986.
- COL/VOC identification cards listing monthly date stamps of January, February, March and April 1987.
- An identification card from Central Adult High School, which expired on June 30, 1987.
- A California identification card issued on August 10, 1987.

- A reference slip dated August 18, 1989 from a representative of the Los Angeles County Department of Public Social Service who indicated that the applicant has been receiving AFDC since August 1980.
- A Form H-6 from the California Department of Motor Vehicles, which indicated that it issued identification cards to the applicant on August 10, 1987 and September 9, 1987. The Form H-6 also listed the applicant's 1984 and 1987 addresses in Los Angeles, California.

In her Notice to Deny issued on September 15, 2003, the director noted that the applicant has submitted birth certificates for her two children "showing dates of birth occurring within the said periods" and that the birth certificates appeared to be fraudulent "in that the printed entries are of a different type form." Counsel, in response, provided the children's original certified birth certificates, which has refuted the director's findings.

Although the applicant indicated on her questionnaire to determine class membership that she was receiving AFDC for her son beginning August 1980, such claim is not plausible. Moreover, counsel asserted that said claim was due to a clerical error made by the individual who prepared the document. Counsel and the applicant stated that she was only receiving aid in 1980 for her first child born on February 18, 1980 and began receiving aid for her son subsequent to his birth in 1981. Counsel provided a statement dated February 14, 2004, from the individual who prepared the questionnaire indicating it contained an error regarding the date the applicant's son initially received aid. Counsel also provided a letter dated December 11, 2003 from a representative of Los Angeles County Treasurer and Tax Collector indicating that the applicant received welfare service from July 1980 through May 1999, food stamps from August 1985 through June 1999, and Medi-Cal from July 1980 through November 2003 for her children born in the United States.

The regulation at 8 C.F.R. § 245a.18(a) states in part that an alien who has been convicted of a felony or three or more misdemeanors committed in the United States is ineligible for adjustment to LPR status.

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under the term "felony," pursuant to 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o)

The record reflects that on July 27, 1990, the applicant was arrested under the alias [REDACTED] by the Los Angeles Police Department for one count of disorderly conduct –prostitution, a violation of section 647(B) PC. On August 1, 1990, the applicant was convicted of the misdemeanor offense and placed on probation for one year on the condition she served five days in jail to which five days were credited. Case no. 90R19057.

The record also reflects that on September 4, 1998, the applicant was arrested in Los Angeles County, and subsequently charged with driving under the influence, a violation of 23152(A) VC. On October 5, 1998, a charge of reckless driving, a violation of 23103(A) VC was added and the applicant was convicted of the misdemeanor charge. The remaining count was dismissed. Case no. 8SB07338.

The director, in denying the application, determined that the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to her conviction of prostitution. However, the applicant was convicted of a single misdemeanor crime involving moral turpitude and was not sentenced to imprisonment for a period of

over six months for this offense. Therefore, this conviction **alone** is not sufficient to establish the applicant's inadmissibility under section 212(a)(2)(A)(i)(I) of the Act.

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.