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U.S. Citizenship  
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FILE:



Office: Los Angeles

Date:

JUL 18 2005

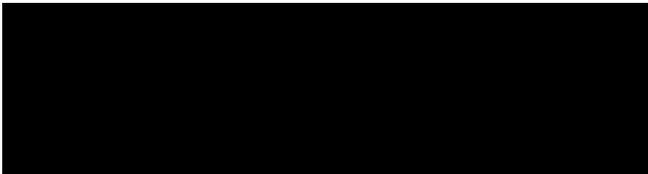
IN RE:

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:



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.

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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 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. The applicant provides new documentation in support of her claim of continuous residence.

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 or about July 18, 1991. At part #35 of the Form I-687 application where applicants were asked to list all absences from the United States beginning from January 1, 1982, the applicant listed two absences from this country when she traveled to Guatemala from March 14, 1984 to April 11, 1984, and again from November 15, 1987 to December 12, 1987. In support of her claim of continuous residence in the United States since before January 1, 1982, the applicant submitted one affidavit of residence and an employment affidavit. The applicant subsequently provided another affidavit attesting to both her residence in this country and employment during the requisite period.

The record shows that the applicant subsequently submitted her Form I-485 LIFE Act application on March 27, 2002. The applicant included copies of previously submitted documents, as well as the following new

evidence in support of her claim of residence for the requisite period: four affidavits of residence and a photocopied receipt for medical services.

The record shows that the applicant was subsequently interviewed at the Los Angeles, California, District Office on October 7, 2003. The notes of the interviewing officer reflect that the applicant provided the original copy of the receipt cited in the previous paragraph. These notes also demonstrate that the applicant testified that she had been absent from the United States on only two occasions in March 1984 and November 1987.

In the notice of intent to deny issued on March 24, 2004, the district director questioned the veracity of the applicant's claimed residence in the United States. Specifically, the district director concluded that the original receipt provided by the applicant appeared to be in good condition for a document of such age. However, such a conclusion must be considered speculative, as the condition of the receipt tends to reflect the applicant's careful record keeping and storage rather than any lack of credibility. In addition, the district director noted that the applicant previously submitted a Form I-589, Request for Asylum, to the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS). At part #12 of the Form I-589 asylum application where applicants were asked to list the date of their last arrival in the United States, the applicant specified that she last entered this country without inspection on June 30, 1987, by crossing the border on foot from Mexico at San Ysidro, California. The district director indicated that the applicant's failure to disclose this absence at the time of her interview further diminished the credibility of her claim of residence in the United States for the requisite period. The applicant was granted thirty days to respond to the notice.

Both in response to the notice of intent to deny and subsequently on appeal, counsel submits a statement in which she declares that the applicant has always utilized immigration consultants and notaries to assist her in preparing the various applications she submitted to the Service and its successor CIS. Counsel contends that these individuals prepared these applications without indicating that the documents had been executed by an individual other than the applicant. Counsel states that the June 30, 1987 entry date attributed to the applicant on the Form I-589 asylum application was an erroneous date listed by the preparer. Counsel asserts that the applicant is unable to obtain further evidence to support her claim of residence in this country because of her status as an undocumented illegal alien during the requisite period, as well as the considerable passage of time since such events occurred.

The explanation put forth by counsel regarding the erroneous date of entry listed on the Form I-589 asylum application is considered reasonable under these circumstances and appears to have credibly resolved the questions raised by the district director regarding applicant's claim of residence in this country since prior to January 1, 1982. It must be further noted that the applicant has subsequently submitted new contemporaneous documents, affidavits and letters in support of her claim of residence both in response to the notice of intent to deny and on appeal. Consequently, the inconsistencies cited by the district director are minimal and cannot be considered as fatal to the applicant's claim of continuous residence in the United States from prior to January 1, 1982 to May 4, 1988.

In this instance, the applicant submitted evidence, including affidavits and contemporaneous documents, which tends to corroborate his claim of residence in the United States during the requisite period. The district director

has not sufficiently established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. As stated in *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.