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U.S. Citizenship  
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JUN 13 2005

FILE: [Redacted] Office: HOUSTON Date:

IN RE: Applicant: [Redacted]

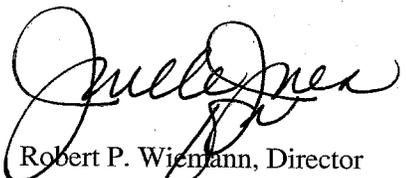
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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. Wienmann, 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, Houston, Texas, and is now before the Administrative Appeals Office 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 documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel argues that the director failed to consider the applicant's response to the Notice of Intent to Deny.

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).

At the time of his interview, the applicant signed a sworn statement dated October 28, 2002, indicating that his spouse, whom he met in 1985 in California, returned to Guatemala in April 1987 and did not return to the United States until 1991. The applicant stated he only departed the United States only once in April 1987.

The director determined that based on the inconsistency regarding the applicant's absences from the United States in his oral testimony, sworn statement and the documentation provided with his application, he had failed to meet his burden of proof to establish entry into the United States prior to January 1, 1982 and continuous residence through May 4, 1988. The director, in his Notice of Intent to Deny issued on August 29, 2003, informed the applicant of his statement taken at the time of his interview, and indicated that:

1. his marriage license indicated it was issued in Mexico on December 13, 1985 and, therefore, he was not in the United States on that date;
2. based on his son's August 18, 1988 date of birth, "and the fact that your wife was not in the United States since April 1987, you must have visited your wife at least nine to ten months before the child was born;" and

3. he was absent from the United States in November or December 1987.

Counsel, in response, asserted that the applicant in 1991 did not read or write English and was not aware of the error made by the notary public regarding his absences at item 35 on his Form I-687 application. Counsel stated that the country in which the marriage occurred is Guatemala, not Mexico. Although counsel concedes that the applicant was not in the United States on December 13, 1985, his assertion that this absence was listed on the Form I-687 application is incorrect. The applicant listed "none" at item 35. Counsel stated that the applicant's second absence was April 1987 and he was subsequently detained by the legacy Immigration and Naturalization Service. Counsel asserted that the applicant was never absent in November or December 1987.

Regarding, the spouse's departures, counsel asserted that the spouse departed the United States in April 1987 and immediately returned to the United States upon given birth to her daughter on May 16, 1987. Counsel, in her brief, indicated in one paragraph that the applicant's "second absence from the United States was when she returned to Guatemala was in November 1987, to have her son ..." and in another paragraph indicated the spouse departed "in August 1988 when she gave birth to her second child ...." It is noted that the son was born on August 18, 1988. Counsel provided affidavits from affiants and employers who attested to the spouse's presence and residence in the United States since 1985 along with her daughter's immunization record, which reflects vaccinations given during 1987 and 1988.

Although counsel has provided contradicting statements regarding the spouse's departures from the United States, the issue at hand is whether the applicant departed the United States in 1987. The record contains an earlier sworn statement by the applicant dated December 14, 1993 in which he admitted that his first departure from the United States was on December 13, 1987 and he returned in January 1988. It must be noted that the applicant's counsel at the time was present and counsel's signature is on the sworn statement.

Furthermore, in an affidavit notarized February 22, 2004, the applicant admitted to the 1987 departure and claimed he reentered the United States on January 15, "1987." The applicant's 1987 departure does not reflect that it has exceeded *45 days*, and the aggregate of all absences has not exceeded 180 days between January 1, 1982, and May 4, 1988. As each absence did not exceed 45 days, the issue whether each absence was due to an emergent reason need not be addressed. Accordingly, counsel and the applicant have satisfactorily resolved any inconsistencies in the applicant's claim and documentation.

In this instance, the applicant submitted evidence, including contemporaneous documents, which tends 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 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.