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U.S. Department of Homeland Security
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Washington, D.C. 20529



U.S. Citizenship
and Immigration
Services

L2

[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES

Date: JUN 13 2005

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:

Self-represented

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 district director denied the application because the applicant had submitted conflicting information between his Form I-687 application, his LIFE application and oral testimony.

On appeal, the applicant submits an additional copy of his response to the Notice of Intent to Deny.

It is noted that the director, in denying the application, did not address the evidence furnished initially, 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).

The director, in his Notice of Intent to Deny, issued on March 23, 2004, informed the applicant that there were inconsistencies between his oral testimony, his Form I-687 application and LIFE application. Specifically, the applicant indicated on his Form I-687 application that he had three children, a son born September 1980, and two daughters, and born May 28, 1977 and July 4, 1988 respectively. However, on his LIFE application, the applicant did not claim to have any children. On his G-325A Biographic Information, the applicant indicated that he was married, but failed to claim his wife on his LIFE application. On two separate occasions, the applicant was provided the opportunity to correct his LIFE application. In response to the first request the applicant failed to claim his children and wife on his LIFE application and in response to the second request the applicant listed only two children born October 13, 1979 and born 1975).

The applicant, in response, reiterated his claim made at the time of his interview that the female names listed on his Form I-687 application were in fact his sisters. The applicant also reaffirmed that he had two children, and who were born in Mexico, and a third child born in the United States. The applicant asserted that the individual who assisted him with his application made an error on his Form I-687 application. It is noted that the applicant did indicate on his Form I-687 application that he was "separated"

from his wife. It is unclear why the applicant chose to omit his children on his initial LIFE application, nevertheless, as the birth of his two elder children occurred well before the requisite January 1, 1982 statutory cut-off date for establishing entry into the United States, the issue of the applicant's conflicting statements regarding his children is irrelevant to whether the applicant was in the United States.

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.