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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]

Office: Los Angeles

Date: MAR 09 2005

IN RE: Applicant: [Redacted]

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: 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. 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, 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 he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel reaffirms her claim to having resided in the U.S. since 1981, and submits additional evidence in support of her claim.

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 the notice of intent to deny, the district director referenced an apparent contradiction regarding the circumstances of the applicant's claimed entry into the U.S. At the time of her adjustment interview on November 12, 2002, the applicant informed the examining officer that she first entered the U.S. accompanied by her uncle and without inspection in September 1981 at Tijuana at the age of 9. However, this information is at variance with that included in the affidavit dated January 11, 2003 from [REDACTED] which indicates that the applicant babysat for the affiant's son from 1980 to 1987. The applicant's Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (INA) also indicates that the applicant resided in the U.S. since 1980 and that she served as a baby sitter since 1980. It is also noted that, as the applicant's date of birth is June 3, 1969, she would have been 12 years of age at the time she purportedly claimed at her interview to have first entered the U.S.

The applicant, on appeal, reaffirmed having resided in the U.S. since 1981, as she asserted at the time of her adjustment interview. While this information is at variance with that included on her I-687 and affidavit from Ms. [REDACTED] both of which affirm the applicant's residence U.S. residence since 1981 -- this apparent inconsistency is not material to the applicant's claim to eligibility as it does not negate her assertion that she has, in any case, continually resided in the U.S. since prior to January 1, 1982. As regards the matter of the applicant's age at the time she claimed at her interview to have first entered the U.S., her date of birth -- June

3, 1969 -- is a matter of record, having been listed on several applications provided by the applicant herself as *June 3, 1969*. As such, the applicant's purported statement at her interview to the effect that she was only 9 years old in September 1981 -- a time when all other documents in the record indicate she was at least 12 year of age -- appears incongruous but may be attributed to a miscommunication between the applicant and the examiner officer.

While certain minor inconsistencies are admittedly present in the applicant's documentation and testimony, they do not appear material to the applicant's claim of continuous residence during the period in question. Moreover, the totality of the applicant's documentation is otherwise congruent with her claim to have having entered the U.S. illegally and continually resided in this country prior to January 1, 1982. Accordingly, the questions raised in the notice of intent regarding alleged inconsistencies in the applicant's interview testimony do not, by themselves, appear sufficient to refute the applicant's claim to continuous residence in the U.S. during the period under consideration.

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. In an attempt to establish continuous unlawful residence since before January 1, 1982, as claimed, the applicant has provided evidence including no less than nine (9) affidavits on appeal, all of which attest to her residence in the U.S. since 1981. These third-party affidavits 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 evidence provided by the applicant establishes, by a preponderance of the evidence, that she 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.