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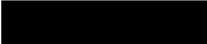
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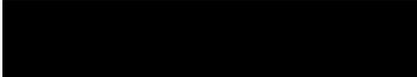
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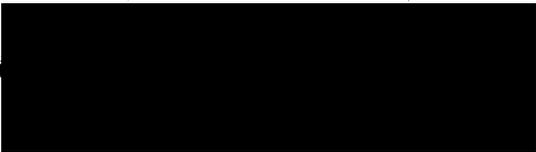
Office: Los Angeles

Date:

IN RE: 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. 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.

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 since before January 1, 1982 through May 4, 1988.

On appeal, counsel indicates that the applicant submitted sufficient documentation to establish her eligibility for permanent resident status under the LIFE Act.

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 support of her claim of continuous residence in the United States since prior to January 1, 1982, the applicant submitted nine affidavits of residence, an employment letter, and a State of California Identification Card.

On July 19, 2004, the district director issued a notice of intent to deny to the applicant informing her of the Immigration and Naturalization Service's, or the Service's (now Citizenship and Immigration Services, or CIS) intent to deny her application because she failed to submit sufficient evidence of continuous unlawful residence in the United States from January 1, 1982 through 1983. Specifically, the district director questioned the veracity of the applicant's claim of residence because of a purported discrepancy regarding her address of residence as contained within the testimony of two affidavits submitted in support of her claim of residence. However, the discrepancy cited by the director is minimal and appears to be the result of the fact that English is a second language for both of the affiants.

It is noted that within this notice, the district director concluded that the applicant was also ineligible to adjust to permanent residence under the provisions of the LIFE Act pursuant to 8 C.F.R. § 245a.18, because she had been convicted of a drug related crime. However, this determination is incorrect in that an alien convicted of a

crime involving a controlled substance is inadmissible under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (INA). The regulation at 8 C.F.R. § 245a.18(c)(2) states that a LIFE Act applicant who is inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the INA as a result of a conviction for a crime involving a controlled substance, cannot have such grounds of inadmissibility waived. While a review of the records reveals that the applicant had been convicted for violating section 11352.1(b), Unlawful Sale of a Dangerous Drug or Device, of the California Health and Safety Code on May 15, 2000, such violation did not involve a controlled substance, but rather a dangerous drug. As both the California Health and Safety Code and the California Criminal Code make a clear distinction between a controlled substance and a dangerous drug or device, it must be concluded that the applicant's criminal conviction was not for a crime involving a controlled substance. Therefore, the issue of the applicant's eligibility and her criminal record need not be discussed further.

It must be noted that the applicant submitted two additional affidavits of residence in response to the notice of intent to deny.

In this instance, the applicant submitted evidence, including affidavits, an employment letter, and a contemporaneous document, which tends to corroborate her 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 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.