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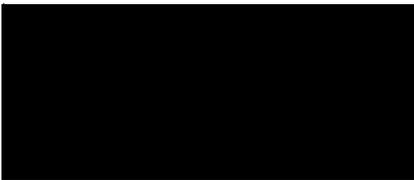

MAR 30 2005

FILE:  Office: Seattle 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. The file has 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, Seattle, Washington, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The director discounted the four declarations from people who claimed to have known the applicant since certain dates because all of the people claimed to be citizens of the United States but none of them provided any evidence that they were in the United States in 1982 or 1984 and that they have the ability to offer credible testimony on the applicant's behalf. The director noted that the affiants had not provided copies of their naturalization certificates or indicated what their former alien registration numbers were so that the information already in possession of Citizenship and Immigration Services or CIS (formerly, the Immigration and Naturalization Service or INS) could be used to give credibility to their statements. The director noted that the five photographs submitted by the applicant provided no indication of when or where the photos were taken and the sales receipts forwarded did not have the name of the person who made the purchases on them. The director also noted that a letter from Dr. [REDACTED] had been forwarded for the record. The director found that an air mail envelope dated August 24, 1983 lacked verifiability because it did not contain any markings from a U.S. post office to establish that it was ever processed in the United States. The 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 states that:

The decision denying the applicatino [sic] to register permanent resident status, based on the LIFE Act, si [sic] contrary to the evidence presented by the applicant in support of the application. It was an abuse of discretion and an error of law for the INS/BCIS to not given [sic] proper weight to the letter from Dr. [REDACTED] [sic] indicating that he has known the applicant since 1985, or to not give proper weight and consideration to the other evidence submitted in support of the application. Additionally, it was an abuse of discretion and an error of law to disregard and not give proper weight to the declarations of four other persons who could verify that the applicant resided in the United States during the required period of time, each of these persons was fully identified and stated how it was that they were able to verify the presence of the applicant in the United States. The decision is based, in part, upon a failure to provide naturalization certificates or alien registratino [sic] numbers of those declarants but this information was never requested [sic] from the applicant. Thus, it is error to use that as a basis to deny the application as there is no reason to question what the witnesses are stating or the fact that they themselves were residing in the United States during the relevant period of time.

The decision is contrary to the spirit and content of the LIFE Act and must be reversed. The applicant should be approved for permanent resident status.

Counsel indicated that no brief and/or additional evidence would be submitted in support of the appeal. Therefore, the record shall be considered complete.

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. See 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. See 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).

As evidence of her United States residence since 1981 the applicant submitted the following documentation:

- (1) Affidavits from [REDACTED] and [REDACTED] stating personal knowledge that the applicant had been living in the United States since prior to January 1, 1982;
- (2) An affidavit from [REDACTED] stating personal knowledge that the applicant had been living in the United States since March 1982;
- (3) An affidavit from [REDACTED] stating personal knowledge that the applicant had been living in the United States since 1985;
- (4) A letter from [REDACTED] M.D. stating that he had known the applicant for many years and that she came to visit him at his medical center in 1985;
- (5) A rental registration form signed by the applicant for a rental unit in Sacramento showing that she arrived on July 11, 1985 and planned to stay two nights;
- (6) Four receipts for products purportedly purchased by the applicant in 1984 and 1986;
- (7) Five photographs submitted by the applicant;
- (8) An envelope mailed in India addressed to the applicant at [REDACTED] [REDACTED] postmarked August 24, 1983.

The director implied that the envelope addressed to the applicant from India in 1983 was not authentic because "The airmail envelope does not contain any marking from a U.S. post office to establish that it was ever processed in the United States." This rationale is incorrect because it is not the practice of the U.S. Postal Service to postmark letters from abroad before they reach their destinations in the United States.

In this instance, the applicant submitted evidence, including contemporaneous documents, which tends to corroborate her claim of residence in the United States during the requisite period. Each of the affidavits and the letter from the doctor contained contact information for the writers and could have been verified without reliance upon further citizenship or alien registration number information concerning the affiants. The 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 director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.