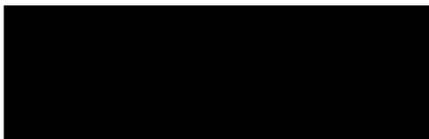


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and Immigration
Services

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FILE: [REDACTED] Office: DALLAS Date: MAY 04 2006
MSC 02 236 61723

IN RE: Applicant: [REDACTED]

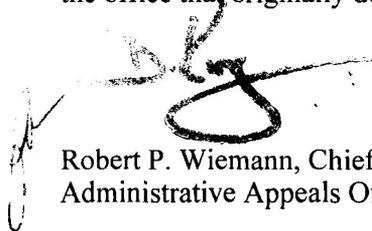
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Dallas, 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 provides copies of previously submitted documents in support of the 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).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application.

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 an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence throughout the application process:

- Several envelopes postmarked during 1984, 1985 and 1986.

- An affidavit notarized September 10, 1990 from a sister, [REDACTED] of Dallas, Texas who indicated that the applicant resided at her residences at [REDACTED] from June 1983 to May 1985 and at [REDACTED], from January 1987 to December 1988. [REDACTED] asserted that the applicant assisted with housework and with her children.
- Affidavits notarized September 7, 1990 and March 17, 2002 from [REDACTED] and [REDACTED] of Dallas, Texas who indicated that the applicant resided with them at [REDACTED] from February 1981 to June 1983, and at [REDACTED] from May 1985 to December 1986.
- Letters dated September 20, 1990 and March 17, 2002 from [REDACTED], rector at Santuario de Santa Maria de la Salud in Dallas, Texas who indicated that the applicant was an active member of the church's youth group from February 1981 to December 1988.
- Affidavits notarized September 13, 1990 and April 7, 2002 from [REDACTED] of Dallas, Texas who indicated that the applicant was in his employ from October 1981 to May 1983 and from May 1985 to November 1986.
- An additional affidavit notarized July 10, 2003 from [REDACTED] who reaffirmed the applicant's employment at his business, Cut and Sew in Dallas, Texas from October 1981 to May 1983 and from May 1985 to November 1986.
- A letter dated April 16, 2002 from a medical records supervisor at Los Barrios Unidos Community Clinic in Dallas, Texas who indicated that the applicant was a patient at its facility on December 8, 1984.
- An affidavit notarized March 12, 2002 from [REDACTED] president of J. B. Manzanares, Inc., in Dallas, Texas who indicated that the applicant was in his employ from 1987 to 1990.
- Affidavits notarized April 7, 2002 and July 9, 2003 from [REDACTED] of Dallas, Texas who indicated that the applicant was employed at Sabinas Tortillas, a business previously owned by he and his family from June 1983 to April 1985 and from December 1986 to May 1987.

At the time of the applicant's interview, she was requested to provide evidence such as medical records, check stubs, school records, employment records, etc. Counsel, on appeal, asserts that, as a result of her undocumented immigration status, the applicant is unable to submit such evidence. Under these circumstances, the applicant's inability to submit additional contemporaneous documentation of residence is not found unduly implausible. As previously noted, the regulations at 8 C.F.R. § 245a.2(d)(3)(vi)(L) specify that "any other relevant document" may be submitted.

The statements of counsel on appeal regarding the amount and sufficiency of the applicant's evidence of residence have been considered. Furthermore, counsel's contention that the applicant's inability to produce additional evidence of residence for the period in question was the result of the passage of time is considered to be a reasonable explanation in these circumstances.

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. 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 in *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, including affidavits submitted by persons all whom are willing to testify in this matter, 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.