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U.S. Citizenship  
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Services

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[REDACTED]

FILE:

MSC 02 121 60136

Office: LOS ANGELES

Date: SEP 22 2006

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:

[REDACTED]

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

On appeal, counsel states that the applicant has met her burden of proof “through her applications, oral testimony, and extensive documentary evidence.” Counsel also submits a brief.

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. 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 petitioner 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 or petitioner 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 or petition.

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 applicant stated that she first entered the United States on October 11, 1981 without inspection at the San Isidro border. The applicant further stated that she worked as a self-employed housekeeper during the required period.

In an attempt to establish continuous unlawful residence since before January 1, 1982, as claimed, the applicant furnished the following evidence:

1. An October 6, 1990 affidavit and a July 12, 2003 sworn statement from her sister, [REDACTED], in which she stated that the applicant entered the United States on October 11, 1981 and lived with the affiant at her home in Los Angeles. We note, however, that on an April 2, 1997 Form I-130, Petition for Alien Relative, [REDACTED] stated that the applicant first arrived in the United States on August 10, 1984. In response to a request for evidence dated June 7, 2006 from the AAO, the applicant submitted a notarized statement from her sister, in which she stated that the date on the Form I-130 was an error on the part of the attorney who completed the form. [REDACTED] also stated that she applied for six siblings and did not notice the error at the time. [REDACTED] reiterated that the applicant arrived in the United States in October 1981. The applicant also submitted a sworn statement in which she stated that she was unaware that her sister had placed her arrival in the United States in 1984, and that she had only two entrances: one in October 1981 and the other in December 1987.
2. An August 5, 2003 sworn statement from the applicant's cousin, [REDACTED] who stated that the applicant arrived in the United States in 1981.
3. An August 4, 2003 affidavit from the applicant's cousin, [REDACTED] stating that she and the applicant have kept in close contact since the applicant's arrival in the United States in 1981.
4. An August 16, 1990 sworn statement from [REDACTED] certifying that the applicant worked as her housekeeper from February 24, 1982 to November 22, 1988. [REDACTED] also submitted a sworn affidavit dated August 14, 2003, in which she stated that she first met the applicant in Mexico in 1980, and again in 1981 after she came to live with her sister.
5. An August 21, 1990 sworn statement from [REDACTED] certifying that the applicant had worked for her or for her now deceased mother on a part-time basis since 1982.
6. An August 13, 2003 sworn statement from [REDACTED] who stated that she has known the applicant since 1982, having met her through the applicant's sister. [REDACTED] stated that she saw the applicant frequently during 1983 and 1984, and that she hired the applicant to take care of her children twice a week for four hours.
7. A July 26, 2003 letter from the applicant's brother-in-law, stating that he has known the applicant since 1984.
8. An August 21, 2003 sworn affidavit from [REDACTED] stating that she first met the applicant in 1983 through the applicant's sister, and that since that time, the applicant has lived in various cities in California.
9. A July 26, 2003 affidavit from [REDACTED] who stated that she met the applicant in September 1984 through the applicant's sisters, and that the applicant has lived in the various cities in California since that date.
10. An undated letter from [REDACTED] who stated that he employed the applicant one day a week from November 5, 1985 to July 21, 1988. [REDACTED] also submitted a sworn letter dated August 14, 2003, in which he stated that he knew the applicant prior to her marriage (in 1992), and that she cleaned his house one day a week from November 5, 1985 to July 21, 1988.

11. A July 25, 2003 sworn letter from the applicant's sister-in-law, [REDACTED] stating that she met the applicant in 1985 through a family member and prior to her marriage to the applicant's brother.
12. An August 11, 1990 affidavit from [REDACTED] stating that she is a friend of the affiant and that she has personal knowledge that the applicant has been in the United States since 1985.
13. The applicant's March 11, 1986 California identification card

The applicant submitted copies of several envelopes addressed to her in the United States with canceled postmarks. Some of the dates are illegible and provide no evidence of when they were mailed. Those postmarks in the qualifying period that are legible reflect cancellation dates in 1987 and 1988.

The applicant also submitted copies of photographs on which she has identified dates and locations that she claims establish her presence in the United States. However, only one of the photographs is dated and none provide independent evidence of the locations at which they were taken.

Although the applicant's sister stated in one document that the applicant arrived in the United States in 1984, the applicant submitted numerous affidavits and third-party statements attesting to her continuous residence in the U.S. during the period in question and that are consistent with her claim of residency on her application. The applicant's sister, in a June 7, 2006 statement, indicated that the error was due to her personal inattention and reaffirmed that the applicant arrived in the United States in October 1981.

Affidavits in certain cases can effectively meet the preponderance of evidence standard. 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 by affiants and acquaintances who have provided their current addresses and phone numbers and have indicated their willingness to come forward and testify in this matter if necessary, 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 establishes, 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.