U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: Los Angeles Date: OCT 20 2004

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

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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

identifying data deleted to prevent clearly unwarranted invasion of privacy

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 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, the applicant reaffirms her claim to have resided in the U.S. since 1981. The applicant also asserted it was difficult for her to establish continuous residence because her existence as a migrant field worker prevented her from attending school and also because she lived with her parents during the period in question.

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). When something is to be established by a preponderance of evidence it is sufficient that the proof only establish that it is *probably* true. *See Matter of E-- M--*, 20 I&N Dec. 77 (Comm. 1989). Preponderance of the evidence has also been defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979).

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 CIS 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence since prior to January 1, 1982, the applicant submits the following:

- An affidavit from [redacted] attesting to having known the applicant since February 1982, when the affiant encountered the applicant while performing migrant field work in Sacramento, California;

- A handwritten statement from [redacted] who states he has known the applicant and her family since 1982;

- An affidavit from who attests to having known the applicant since December 1981. The affiant indicates she is now the applicant's sister-in-law, asserting she first became acquainted with the applicant while dating her brother; and

- An affidavit from the applicant's brother, who attests to the applicant having departed the U.S. for Mexico from October 15, 1987 to November 14, 1987.

As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation, its credibility and amenability to verification. The applicant, on appeal, states that she lived with her parents during nearly all of the period in question, and that her duties as a migrant field worker assisting her parents prevented her from attending school. A review of the record indicates that, in 1981, when the applicant claimed to have entered and commenced her residence in the U.S., she would have been no more than 11 years of age. As such, the applicant's assertion, on appeal, that her situation during this period made it difficult for her to subsequently obtain evidence of continuous residence appears credible under the circumstances.

In this instance, the applicant has submitted four affidavits and third-party statements which attest to her continuous residence in the U.S. during the period in question. Affidavits in certain cases can effectively meet the preponderance of evidence standard. The director has not established that any of the information in the affidavits and statements submitted by the applicant was false or inconsistent or at variance with the claims made by the applicant on the application. 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, including affidavits and letters 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.