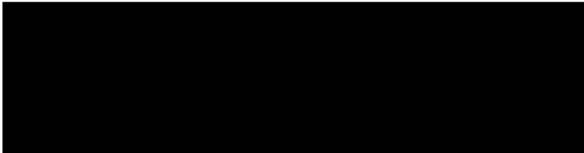




U.S. Citizenship
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Services

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FILE: [Redacted] Office: Los Angeles
MSC 02 058 61384

Date: MAR 28 2006

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

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 determined that the applicant had not established that she resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. The district director further determined the applicant was likely to become a public charge as defined at 8 C.F.R. § 245a.18(c)(2)(vi). Based upon these determinations, the district director concluded that the applicant was ineligible to adjust to permanent residence under the provisions of the LIFE, and, therefore denied the application.

On appeal, the applicant asserts that she has provided sufficient and credible evidence to establish continuous residence in the United States from prior to January 1, 1982 to May 4, 1988. The applicant contends that the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) erroneously concluded that the applicant was likely to become a public charge in light of the totality of the circumstances.

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 evidence, the proof submitted by the applicant has to establish only that the assertion or asserted claim 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).

The applicant is a class member in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (INA) on November 6, 1989. When asked at part #42 of the Form I-687 application whether she had received public assistance of any kind, the applicant acknowledged that she had received AFDC, food stamps, and Medi-Cal from July 1978 through the date the Form I-687 application was submitted.

The first issue in this proceeding is whether the applicant established 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. In support of her claim of residence in the United States since

prior to January 1, 1982, the applicant submitted a California Identification Card, documents from the Los Angeles County Department of Public Services, two affidavits, a letter from the Twenty-Eighth Street Elementary School in Los Angeles, California, two State of California Birth Certificates, an application for a State of California Birth Certificate, a letter from the Department of Water and Power of the City of Los Angeles, a receipt from the California Department of Motor Vehicles, a letter from an attorney's office, a handwritten receipt, a receipt from the Home Health Education Service, a letter from a retail store, an appointment card from a medical clinic, a telegraphic money order receipt from Western Union, a birth announcement card, a Baptismal Certificate, a report card, two utility bills, school records, a document from the Archdiocese of Los Angeles, California, a customer receipt for a Travelers Express Money Order, and a document from the State of California Health and Welfare Agency.

Subsequently, on November 27, 2001, the applicant filed her Form I-485 LIFE Act application. In response to the question at #2 of Part 3 of the Form I-485 LIFE Act application, the applicant acknowledged that she received AFDC, food stamps, and Medi-Cal from July 1978 through July 2000. In addition, the applicant subsequently submitted tax documents for 2000, 2001, 2002, and 2003, a printout from the Social Security Administration, and two employment letters attesting to her regular employment as a housekeeper and babysitter from 2001 to 2004.

In the notice of intent to deny issued on May 3, 2004, the district director questioned the veracity of the applicant's claimed residence in the United States by indicating that she had failed to submit sufficient evidence in support of her claim. However, in this instance, the applicant submitted evidence, including affidavits, employment letters, and 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 proof submitted by the applicant has to establish only that the assertion or asserted claim 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 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. Consequently, the applicant has overcome this particular basis of denial cited by the district director.

The other issue in this proceeding is whether the applicant was likely to become a public charge. The district director determined that the applicant was ineligible to adjust to permanent resident status under the provisions of the LIFE Act because she was likely to become a public charge as defined at 8 C.F.R. § 245a.18(c)(2)(iv).

8 C.F.R. § 245a.18(c)(2) lists those grounds of inadmissibility contained at section 212(a) of the Immigration and Nationality Act (Act) that may not be waived including section 212(a)(4) of the INA (public charge), except for an alien who is or was an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act). If a LIFE Act applicant is determined to be inadmissible under section 212(a)(4) of the Act, he or she may still be admissible under the Special Rule described under paragraph (d)(3) of this section. *See* 8 C.F.R. § 245a.18(c)(2)(iv).

The regulations at 8 C.F.R. § 245a.18(d)(1), 8 C.F.R. § 245a.18(d)(2), and 8 C.F.R. § 245a.18(d)(3) provide the factors to be considered in determining whether an applicant is likely to become a public charge and whether the special rule applies.

(1) In determining whether an alien is "likely to become a public charge", financial responsibility of the alien is to be established by examining the totality of the alien's circumstance at the time of his or her application for adjustment. The existence or absence of a particular factor should never be the sole criteria for determining if an alien is likely to become a public charge. The determination of financial responsibility should be a prospective evaluation based on the alien's age, health, family status, assets, resources, education and skills.

(2) An alien who has a consistent employment history which shows the ability to support himself or herself even though his or her income may be below the poverty level is not excludable under paragraph (c)(2)(vi) of this section. The alien's employment history need not be continuous in that it is uninterrupted. In applying the Special Rule, the Service will take into account an alien's employment history in the United States to include, but not be limited to, employment prior to and immediately following the enactment of IRCA on November 6, 1986. However, the Service will take into account that an alien may not have consistent employment history due to the fact that an eligible alien was in an unlawful status and was not authorized to work. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor. It is not necessary to file a waiver in order to apply the Special Rule for determination of public charge.

(3) In order to establish that an alien is not inadmissible under paragraph (c)(2)(vi) of this section, an alien may file as much evidence available to him or her establishing that the alien is not likely to become a public charge. An alien may have filed on his or her behalf a Form I-134, Affidavit of Support. The failure to submit Form I-134 shall not constitute an adverse factor.

The applicant has acknowledged that she received public assistance in the form of AFDC, food stamps, and Medi-Cal from July 1978 through July 2000. However, it appears that the applicant received such assistance on behalf of her three minor children because she was a single mother without any spousal support in this period. The applicant has submitted sufficient evidence to

demonstrate consistent employment and taxable earnings since 2000 including tax documents, Social Security Administration records, and employment letters. Although the applicant's earnings are below the poverty level, such earnings have been sufficient to sustain her, as the record contains no evidence that she has received public assistance since July 2000. Further, in response to the notice of intent to deny the applicant submitted a Form I-134 affidavit of support executed by [REDACTED] who also provided tax documents from 2003. The evidence in the record tends to establish that the applicant presently possesses the ability and means to support herself financially and has friends and family that could provide assistance if needed in case of emergency. It must be concluded that the applicant is not likely to become a public charge in light of the totality of the circumstances. Therefore, the applicant has overcome this particular basis of denial cited by the district director as well.

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.