U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: SAN ANTONIO Date: MAY 24 2006
MSC 01 364 60355

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. 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, San Antonio, 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 failed to comply with the Request for Additional Evidence, which requested that the applicant provide evidence of her continuous residence since before January 1, 1982 through May 4, 1988 and of her continuous physical presence from November 6, 1986 through May 4, 1988 in the United States.

On appeal, counsel argues that the applicant was 13 years old when she entered the United States and, therefore, it cannot be expected for her to provide employment documents, utility bills or some of the other documents outlined in the regulation. Counsel asserts that the applicant's family decided not to have her attend school in the United States due to her illegal status. Counsel states 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:

- An affidavit notarized March 16, 2001 from [redacted] of Houston, Texas, who indicated that he has known the applicant since 1986. [redacted] asserted that he was a neighbor and has maintain a friendship since that time.

- A letter dated March 4, 1991 from a brother and sister-in-law, [redacted] of Houston, Texas, who indicated that the applicant resided with them at several addresses throughout the Houston area since September 1981. The affiants asserted that due to the lack of proper documents, the applicant did not attend school in the United States. The affiants stated that the applicant assisted with light housekeeping duties and babysitting while they went to work.

- An additional affidavit notarized March 17, 2001 from [redacted] who attested to the applicant's entry into the United States on October 1, 1981 [redacted] reiterated his claim that the applicant resided with him and assisted with the household chores and babysitting. [redacted] asserted that he financially provided for the applicant until September 1993.

- An affidavit notarized March 13, 2001 from [redacted] of Houston, Texas, who indicated that she has known the applicant since February 1984. [redacted] asserted that she was a neighbor during the time period the applicant resided at the apartment complex.

- An affidavit notarized March 16, 2001 from [redacted] a landlord and owner of the apartments located at [redacted] attested to the applicant's residence with her brother, [redacted] from September 1981. [redacted] based his knowledge through a request made by [redacted] to have the applicant reside with him.

- An affidavit notarized March 16, 2001 and an undated affidavit from [redacted] of Houston, Texas, who indicated that she has known the applicant since February 1982, and has maintained a close friendship since that time. [redacted] asserted that she was a neighbor during the time the applicant resided at [redacted] attested to the applicant's other Houston residences at [redacted]

- An undated affidavit from [redacted] who indicated that she is a co-worker and met the applicant at the applicant's birthday party in April 1983. [redacted] attested to the applicant's Houston residences at [redacted]

- An undated affidavit from [redacted], who indicated that she met the applicant at church in May 1985, and has maintained a close friendship since that time. [redacted] attested to the applicant's Houston residence at [redacted]

- An undated affidavit from [redacted] of Houston, Texas, who indicated that he is a co-worker and met the applicant at a social gathering in July 1987. [redacted] attested to the applicant's Houston residence at [redacted]

- Several envelopes postmarked during 1988 and addressed to the applicant at [redacted] Houston, Texas.

The statements of counsel on appeal regarding the amount and sufficiency of the applicant's evidence of residence have been considered. As the applicant was 13 years of age when she came to the United States, the lack of contemporaneous documents is therefore not found to be unusual.

It is noted that the director failed to issue a Notice of Intent to Deny prior to the issuance of her decision as required by 8 C.F.R. § 245a.20(a)(2). Nevertheless, in this instance, the applicant submitted evidence, 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 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 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.