

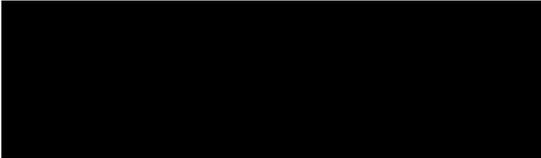
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U.S. Citizenship  
and Immigration  
Services



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FILE:



Office: LOS ANGELES

Date: 01/17/00

IN RE:

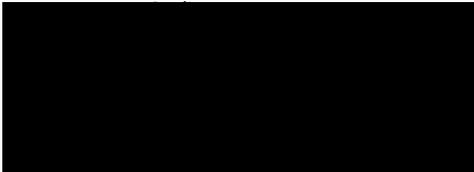
Applicant:



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, 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 on appeal. The appeal will be sustained.

The district director concluded that the applicant's testimony during her interview was at variance with the information provided on her application, thereby casting credibility issues of her claim to have continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. As such, the director denied the application.

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.

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 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 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 director, in her Notice of Intent to Deny issued on January 27, 2004, noted that there were inconsistencies between the applicant's testimony and her application regarding her departures from the United States. Namely, the termination of her first marriage, which occurred on July 21, 1986, her February 27, 1987 marriage to her current husband and the birth of her child on March 2, 1988. The director asserted, "your testimony during the interview did not include any part of these events."

A review of the interviewing officer's notes indicated that the applicant asserted that she was not in Guatemala at the time her first marriage was terminated; her husband mailed the divorce papers to her for signature. The officer's notes also indicated that the applicant's 1987 marriage "was the same way, paper was sent to her from Mexico." The officer's notes, however, are unclear as the applicant's marriage occurred in Guatemala. It is noted that at the time of her interview, the applicant stated in a sworn statement in her native language that she departed to Guatemala in 1987 and 1988 for approximately one month on each occasion.

Counsel, on appeal, asserts that the applicant had two brief departures; February 1987 due to the ill health of her mother and subsequently married her second husband and February 1988 again due to the ill health of her mother and went into emergency labor and gave birth to her child. While the "April 1987" departure indicated on the applicant's Form I-687 application has not been addressed by either counsel or the applicant, said departure does

not reflect that it has exceeded *45 days*, and the aggregate of all absences has not exceeded 180 days between January 1, 1982, and May 4, 1988. As such, counsel has satisfactorily resolved any inconsistencies in the applicant's claim and documentation.

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 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 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.