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

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FILE: [Redacted]

Office: Los Angeles

Date: AUG 04 2005

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:



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

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 denied the application because the applicant had failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988.

On appeal, counsel indicates that the applicant had submitted sufficient evidence to support her claim of continuous residence in this country from January 1, 1982 through May 4, 1988, and that the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) erred in denying the application.

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).

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 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 March 20, 1990. On the Form I-687 application, the applicant claimed that she initially entered this country without inspection in September 1975, and that she subsequently reentered the United States with a fraudulently obtained B-2 visitor's visa on June 30, 1985 and again on July 1, 1988. At part #35 of the Form I-687 application where applicants were asked to list all absences from the United States beginning from January 1, 1982, the applicant listed two absences from this country when she traveled to Mexico on two occasions from June 20, 1985 to June 30, 1985 and from June 25, 1988 to July 1, 1988. It must be noted that the applicant also submitted a Form I-690, Application for Waiver of Grounds of Inadmissibility, to overcome any ground of inadmissibility arising from her misrepresentation in fraudulently procuring the B-2 visitor's visa.

In support of her claim of continuous residence in the United States since prior to January 1, 1982, the applicant submitted an employment letter, three affidavits of residence, medical records, three customer receipts for money orders, and copies of pages from her Mexican passport showing that she entered the United States with a B-2 visitor's visa at San Ysidro, California on June 30, 1985 and then at Los Angeles, California on July 1, 1988. While the applicant has submitted tax returns for the requisite period, it is evident that these are amended returns prepared subsequent to the filing of her form I-687 application on March 20, 1990. Consequently, such documents cannot be considered as evidence of the applicant's residence in the United States during the period in question.

Subsequently, on June 28, 2001, the applicant submitted her Form I-485 LIFE Act application. With her LIFE Act application, the applicant included copies of previously submitted supporting documents, as well as five postmarked envelopes, an employment letter, and an additional affidavit of residence.

On February 12, 2004, the district director issued a notice of intent to deny to the applicant informing her of the Service's intent to deny her application because she failed to submit sufficient evidence of continuous unlawful residence in the United States from January 1, 1982 through May 4, 1988. Specifically, the district director observed that the applicant had submitted only third-party statements and affidavits that are not accompanied by other credible documentation. However, pursuant to *Matter of E--M--*, *supra*, affidavits in certain cases *can* effectively meet the preponderance of evidence standard, and the district director cannot simply refuse to consider such evidence merely because it is unaccompanied by other forms of documentation. Moreover, the district director failed to acknowledge that the applicant had submitted contemporaneous documents to support her claim of residence and to address such evidence in the notice. Therefore, the district director's conclusions regarding the credibility of the applicant's claim of residence and the sufficiency of her supporting documentation as expressed in the notice of intent must be considered as questionable.

The applicant was granted thirty days to respond to the notice and provide additional evidence in support of her claim of residence in the requisite period.

In response, counsel submitted a statement in which she asserted that the applicant had submitted sufficient evidence to support her claim of continuous residence in this country for the period in question. Counsel noted the difficulty in attempting to obtain evidence relating to events that occurred while the applicant was in an illegal status after such a considerable and significant period of time.

The district director determined that the applicant had failed to establish her claim of residence for the requisite period and denied the application on March 12, 2004.

The statements of counsel regarding the amount and sufficiency of the applicant's evidence of residence, her prior status as an illegal alien, and the considerable passage of time have been considered. 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 applicant in this case has provided nine affidavits, employment letters, and contemporaneous documents affirming her residence and employment in this country during the period in question. Such documents may be accorded substantial evidentiary weight and are sufficient to meet her burden of proof of residence in the United States for the requisite period.

The evidence provided by the applicant establishes, by a preponderance of the evidence, that she 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.



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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.