U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: Los Angeles Date: FEB 23 2005

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, Houston, Texas, 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 not demonstrated that she had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, the applicant submits additional evidence in support of her claim to continuous residence in the U.S. 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).

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1), as follows: An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.

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).

In the notice of intent to deny, the director indicated that, on her Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act, the applicant had purportedly failed to list any residence in the U.S. An examination of the record of proceedings, however, discloses both an original along with a photocopy of the applicant's I-687 application, which was signed and completed by the applicant on May 28, 1990. At item 33 on the form, in which an applicant is requested to list all U.S. residences since date of first entry, three separate street addresses are provided, along with the respective time frames during which the applicant claimed to have resided at those addresses. As such, there does not appear to be any support for the intent notice's determination regarding the absence of any indication the applicant ever resided at a U.S. address.

A further inconsistency set forth in the notice of intent concerns the matter of the applicant's departures fr the U.S. during the period in question. According to the applicant's I-687, she departed the U.S. for M on October 25, 1985 for the purpose of visiting relatives and giving birth, after which she returned to t

on November 15, 1985. The I-687 also indicates that on November 6, 1985, during this visit to Mexico, the applicant gave birth to a daughter. According to the applicant's Biographic Information Form G-325, along with information she provided at her adjustment interview at the Los Angeles district office of Citizenship and Immigration Services (CIS), the applicant was married the following month on December 23, 1985. As noted above, an alien is considered to have resided continuously in the United States providing that no single absence from the United States has exceeded *forty-five (45) days.* According to the notice of intent, it was determined that the applicant's giving birth along with her subsequent marriage occurred during the same departure from the U.S., thereby exceeding the required 45-day limit for such absences.

In her October 17, 2003 rebuttal to the notice of intent, the applicant reaffirmed her claim as set forth on the I-687 application to have departed the U.S. for Mexico on October 25, 1985 and to have returned to the U.S. twenty-one days later on November 15, 1985, after having given birth to her daughter on November 6, 1985. In addition, the applicant explained that on December 21, 1985, she again departed the U.S. for Mexico in order to get married and returned on December 27, 1985 following her December 23rd marriage. This information provided by the applicant in her rebuttal statement is supported by her testimony under oath at her October 20, 2003 adjustment interview in the presence of an examining district officer. It is concluded that the issues raised in the notice of intent regarding alleged inconsistencies in the applicant's claim and documentation have been satisfactorily resolved by the applicant or do not, by themselves, appear sufficient to negate the applicant's claim to continuous residence in the U.S. during the period under consideration.

Affidavits in certain cases can effectively meet the preponderance of evidence standard. 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. In an attempt to establish continuous unlawful residence since before January 1, 1982, as claimed, the applicant provided furnished considerable evidence including three third-party affidavits attesting to her residence in the U.S. since 1976, an affidavit attesting to her residence since 1980, three affidavits attesting to her residence since 1984, a letter indicating employment from 1980 to 1984, and a 1984 W-2 Wage and Tax Statement made out to the applicant. The affidavits and third-party statements from acquaintances and employers, many of whom indicate their willingness to come forward and testify in this matter if necessary, may be accorded substantial evidentiary weight. This documentation, along with contemporaneous evidence in the form of W-2 Wage and Tax Statements, is sufficient to meet the applicant's 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 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.