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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

L2

[REDACTED]

FILE: [REDACTED] Office: Baltimore

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:

[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. 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.

A handwritten signature in black ink, appearing to read "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, Baltimore, 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 since before January 1, 1982 through May 4, 1988.

On appeal, counsel for the applicant asserts that the documentation submitted in support of the application fully meets the preponderance of evidence standard set forth under the LIFE Act and that the district office's decision of denial should therefore be set aside.

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 CIS 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence since before January 1, 1982, as claimed, the applicant furnished the following evidence:

- four (4) affidavits from acquaintances, including the president of the Kwahu Community Association of the Washington Metropolitan Area, all of whom attest to the applicant's employment and residence in the U.S. since 1981;
- additional affidavits attesting to the affiants having known the applicant since 1986 and 1987, respectively; and
- an affidavit from the applicant's uncle attesting to her residence in the U.S. since 1986.

In denying the application, the district director determined the documentation submitted failed to establish the applicant's residence in the U.S. from prior to January 1, 1982 to May 4, 1988. In rendering this determination, the district director noted several apparent inconsistencies relating to the applicant's

documentation. In an affidavit dated August 4, 2003, [REDACTED] indicated that he was the applicant's uncle and has known her since birth, and attested that he had subsequently encountered her in the greater Washington D.C. area in October 1986. Subsequently, on February 5, 2004, the affiant [REDACTED] was contacted telephonically by a Citizenship and Immigration Services (CIS) district officer for verification purposes. When queried, the affiant purportedly informed the inquiring officer that he was a family member but not a blood relative of the applicant, and that the applicant first came to the U.S. approximately 10 years ago. This information is clearly at variance with that provided in [REDACTED]'s affidavit.

In response, counsel submitted a brief on appeal in which he indicated that, when this affiant, [REDACTED] was subsequently contacted, he informed counsel that he had been confused during the telephonic interview with the CIS officer and did not fully understand what was being asked of him. Counsel also asserts that [REDACTED] has since agreed to a subsequent CIS interview for clarification purposes.

In his denial notice, the district director also indicated that attempts by CIS to telephonically contact some of the other affiants for verification purposes had proven unsuccessful. However, upon examination of the record, it appears that, in attempting to contact the affiants in question, the CIS officers instead reached their answer machines. Based on the sketchy examiner notes written in the margins of the affiants' affidavits, it appears these verification calls were made during the weekday when the parties being sought may well have been at work and, therefore, unavailable to provide the requested information. Nor is it clear whether or not the verifying officers actually attempted to leave return voice mails on the affiants' answer machines. In any case, given the inconclusive nature of the circumstances involved in the officers' verification attempts, it is not possible to render a definitive determination regarding the accuracy or the veracity of the affidavits in question.

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 at least seven affidavits and third-party statements affirming her residence as well as her employment in the U.S. during the period in question. The information provided in these affidavits is congruent with that included on the applicant's other documentation, including her I-687 application. Such affidavits, furnished by individuals who indicate their willingness to come forward and testify in this matter, if necessary, may be accorded substantial evidentiary weight are 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.