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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



JAN 27 2005

FILE:



Office: Phoenix

Date:

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: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has 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, Phoenix, Arizona, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The district director decided that the applicant had not established that she resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. This decision was based on the director's determination that the applicant had exceeded the forty-five (45) day limit for single absences from the United States during this period, as set forth in the regulations at 8 C.F.R. § 245a.15(c)(1) by not residing in this country from November 1986 through May 1988.

On appeal, the applicant requests that her case be reviewed.

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. *See* 8 C.F.R. § 245a.12(e).

To be eligible for adjustment to permanent resident status under the LIFE Act, however, the applicant must also establish continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B)(i) of the LIFE Act reads as follows:

In general – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act that were most recently in effect before the date of the enactment of this Act shall apply.

“Continuous unlawful residence” is defined in the regulations 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.

The director determined that the applicant arrived in the United States prior to January 1, 1982. However, the director noted that when questioned about her residence in the United States during the portion of the qualifying period beginning in approximately November 1986 through May 1988, the applicant testified that she did not attend school because she was ill with hepatitis. The director noted that the applicant's mother had submitted a letter indicating that she did not take the applicant to the doctor in 1987 and 1988 because she had no insurance. The director noted that this letter was uncorroborated and that it was difficult to understand the allegation regarding the applicant not seeing a doctor then, given the availability of free or low cost medical care and particularly in light of such a serious disease as hepatitis. The director noted that the immunization record that the applicant submitted bears the notation "varicella history 1987." The director stated that given the applicant was vaccinated on numerous occasions, the applicant's mother's statement regarding not taking the applicant to the doctor and the reason for not taking her to the doctor during the time lacked credibility. The director found that the letters from [REDACTED] and [REDACTED] lack specificity and foundation for the facts they appear to present, and that none mentions any incidence of illness preventing the applicant from attending school for any period.

The applicant was born on January 26, 1976 in Mexico. She was present in this country as early as October 12, 1977, as she received a vaccination in the United States on that date. The record contains a photocopy of a Form I-687 Application for Status as a Temporary Resident under section 245A of the INA signed by the applicant on January 2, 1990. The application indicates that she had not been absent from the United States since her initial entry. On October 30, 1986, she was issued a report card from her primary school in Phoenix, Arizona showing her progress from grades one through three. Her immunization card that she submitted for the record showed medical treatments from October 12, 1977 through August 18, 2003. As noted by the director, the card showed the entry *varicella history 1987*. (Emphasis supplied.) Varicella is the virus responsible for chicken pox. This entry on her card is significant because it may be interpreted to indicate that in 1987, the applicant's health care provider found her to have a history of having been infected by that virus. That would mean that she was in the United States in 1987, in the middle of the November 1986 through May 1988 period of residence questioned by the director.

To establish continuous unlawful residence since before January 1, 1982, as claimed, the applicant furnished the following evidence that also related to the period from November 1986 through May 1988:

- The applicant's LIFE application that showed continuous residence in Phoenix, Arizona from prior to January 1, 1982 and beyond May 4, 1988;
- An affidavit dated September 26, 2003 from [REDACTED] who attests to having known [REDACTED] [REDACTED] in Phoenix Arizona since Corina was two years old;
- An affidavit dated September 26, 2003 from [REDACTED] from Phoenix, Arizona who attests that he has known the applicant since she was four years old;

- An affidavit dated September 18, 2003 from [REDACTED] who attests that he has known [REDACTED] and her family since 1983 .

In this instance, the applicant has an immunization card and three affidavits attesting to her residence in the United States during the period in question. The director has not established that the information in the affidavits was inconsistent with the claims made on the application, or that it was false information. Furthermore, 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. The documents that have been furnished are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

It should also be noted that, in this case, the record contains no documentation showing that the applicant was furnished any travel documents such as nonimmigrant visas or border crossing cards during the continuous residence period or any information that she was the subject of any legal encounter with officers of the Immigration and Naturalization Service, (now Citizenship and Immigration Services, or CIS) during that time. Additionally, the record does not show that she left this country for any reason after her initial entry.

The applicant has also provided school records to show that she was residing in this country during her formative years. The affidavits provided by the applicant, accompanied by contemporaneous evidence, support 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.

ORDER: The appeal is sustained.