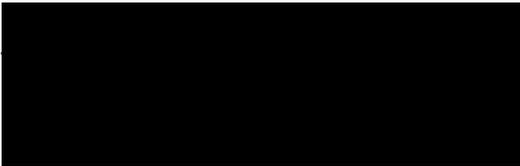


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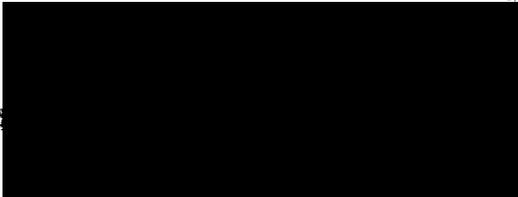
IN RE:

Applicant:



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:



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, Dallas, 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, counsel asserts that the applicant has submitted sufficient evidence to support her claim of continuous residence in this country since 1981.

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).

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 record shows that the applicant submitted her Form I-485 LIFE Act application on July 9, 2002. The record also contains a "Form for Determination of Class Membership in CSS v. Meese" that is signed by the applicant and dated May 19, 1991. While the applicant claimed that she entered the United States in December 1981 and continuously resided in this country from such date through May 4, 1988 on both of these documents, she failed to submit any evidence to support her claim.

A review of the record reveals that the applicant appeared for the requisite interview relating to her LIFE Act application at the Dallas, Texas District Office on March 24, 2003. During the course of this interview, the applicant provided a signed sworn statement in which she declared that she entered the United States in 1981 but remained for only one month before returning to Mexico. The applicant further indicated that she re-entered this country again to search for her father in 1987.

On July 1, 2003, the district director issued a notice of intent to deny informing the applicant that her application would be denied as a result of the sworn statement she provided at the interview. However, a

review of the sworn statement raises questions regarding the validity of this finding. Although the officer who apparently conducted this interview and executed the sworn statement specified it was done so in Spanish, the statement is written entirely in English. In addition, the record does not contain the contemporaneous notes of the interviewing officer or any other record of testimony provided by the applicant to demonstrate the manner in which information relating to her claim of residence in this country for the period in question was developed during her interview. If the interview was conducted in Spanish and the sworn statement executed in Spanish, the record should contain direct evidence to reflect such circumstances.

The sworn statement itself contains a narrative statement from the applicant and her responses to questions posed by the interviewing officer. In both the statement and her responses, the applicant indicated that she entered the United States in 1981 without inspection, remained in this country one month before returning to Mexico, and then re-entered to this country without inspection again in 1987. However, the questions posed by the interviewing officer raise issues seemingly unrelated and contrary to the applicant's claim of residence. While the officer first asked the applicant if she had first entered the country without inspection in 1981, the officer's next two questions refer to this entry as one through the port of entry at Laredo, Texas and her period of authorized stay to remain in the United States after the entry. Furthermore, the interviewing officer also questioned the applicant regarding an entry made by her into this country as an F-1 student, the date she stopped being an F-1 student, and whether she was aware her status as an F-1 student expired thirty days after she stopped attending class. The applicant has consistently claimed that she entered the United States without inspection in 1981, with no indication that this entry or any other subsequent entry was lawful in that such entry occurred at a port of entry, with a visa, and with a period of authorized stay. The relevance and purpose of such questions is unclear and confusing in light of the applicant's claim of residence in this country since prior to January 1, 1982. This confusion is further magnified by the fact that the record contains no evidence reflecting testimony provided by the applicant during her interview as has been discussed above.

In response to the notice of intent to deny, the applicant provided a statement in which she declared that her father first brought her to the United States from Mexico in 1981. The applicant stated that her father brought her to live with him in the United States after her parents were divorced in Mexico and he was awarded custody of her. The applicant indicated that she was unsure of the manner that she and her father entered the country. The applicant claimed that her father was living with another woman in Lewisville, Texas, and that they had two younger children of their own. The applicant asserted that her stepmother forced her to remain at home to care for her half-brothers and that she did not attend school while residing with her father. The applicant declared that she had attended kindergarten and first grade in Mexico before she began residing with her father, and that her father's neighbor provided additional education in the reading and writing of Spanish. The applicant contended that returned to Mexico to visit her mother for a brief period to celebrate the Christmas holiday each year after she began residing with her father. The applicant stated that her father accompanied her on these annual visits until 1985. In 1985, the applicant indicated that her stepmother accompanied her for the first time on her annual return to Mexico to visit her mother at Christmas. The applicant claimed that her stepmother never returned to bring her back to the United States and that she and her mother subsequently traveled to Monterrey, Mexico, because she was intent on finding out what had happened to her father. The applicant asserted that her mother made arrangements with a smuggler for her to be transported back across the border to the United States and to her father's residence on West Pernell Street

in Lewisville, Texas. The applicant indicated that the smuggler crossed the border by car at Laredo, Texas and drove to her father's residence, but the house had been abandoned. The applicant stated that she went next door to the residence of her neighbor, M [REDACTED] who informed that her father, stepmother, and two half-brothers had moved out of the residence about two weeks before she returned. The applicant contended that Ms. [REDACTED] provided her with housing while she unsuccessfully attempted to locate her father. The applicant indicated that Ms. [REDACTED] allowed her to live with her until shortly after she was married in February of 1988. The applicant claimed that she and her husband continued to rent housing from Ms. [REDACTED] at another address in Lewisville, Texas until they moved to Dallas, Texas in 1990.

The applicant also submitted an affidavit signed by her neighbor, [REDACTED] who essentially reiterated the testimony of the applicant as noted in the prior paragraph. In addition, the applicant submitted the affidavit and credentials of [REDACTED] licensed private investigator and polygraph examiner in the state of Texas. Contact with the Texas Polygraph Examiner's Board, Texas Board of Private Investigators, and a variety of Internet sources revealed that Mr. [REDACTED] was licensed and certified as put forth in his credentials as of the date the affidavit was executed on July 23, 2003. In the affidavit, Mr. [REDACTED] indicated that the applicant had been asked to explain the circumstances relating to her claim of residence in the United States for the period from prior to January 1, 1982 to May 4, 1988. Mr. [REDACTED] testified that a list of questions was reviewed and a polygraph test conducted upon the applicant in order to determine the veracity of her claim of residence as expressed in her statement. The list of questions posed by Mr. [REDACTED] to the applicant regarding her claim of residence in this country is contained in the record. Mr. [REDACTED] stated that "[B]ased on my background, training, education and experience in analyzing polygraph examination results, it is my opinion that no deception was indicated."

Counsel submitted a separate statement in which he asserted that he seriously doubted the credibility of the applicant when she first presented her account of events as stated above. Counsel declared that he insisted that the applicant take and pass a polygraph examination to determine the veracity of her claim of residence prior to providing her with legal representation. Counsel noted that applicant's claim of residence as recounted above was determined to be without deception and credible based upon the results of the polygraph examination administered by M [REDACTED] and his analysis of these results. Counsel contended that the holdings reached in *U.S. v. Scheffer*, 523 U.S. 903 (1998) and *U.S. v. Posada*, 57 F.3d 428, 434, (5th Cir.1995), allowed the results of polygraph examinations to be accepted as evidence in civil proceedings. Counsel argued that the applicant's inability to produce additional evidence in support of her claim of residence is the direct result of the unique and extreme circumstances she was forced to endure during the period in question.

The district director determined that the applicant had failed to rebut the information contained in the notice and denied the application on September 10, 2003.

On appeal, counsel asserts that the district director failed to consider the sworn testimony of the applicant and Maria Araceli Corona, as well as the independent scientific evidence reflected in the results of the polygraph examination. Counsel argues that the applicant cannot produce additional evidence to support her claim of residence because she did not attend school in the period in question and such evidence had been in the possession of her father and disappeared with him when he abandoned her. This explanation is considered

reasonable in light of the circumstances put forth by the applicant and the considerable passage of time involved since these events occurred.

The serious deficiencies and flaws of the sworn statement provided by the applicant on March 24, 2003, seriously diminish the probative value of this document. Such deficiencies and flaws also undermine the district director's findings regarding the nature of alleged admissions made by the applicant in this statement. The applicant subsequently submitted documentation, including affidavits and independent scientific evidence, which directly contradicts the purported admissions made by her within the sworn statement. In addition, this evidence tends to corroborate the applicant's claim of residence in the United States from prior to January 1, 1982 to May 4, 1988. 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.