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Washington, D.C. 20529



U.S. Citizenship
and Immigration
Services

12

[REDACTED]

FILE:

[REDACTED]

Office: BALTIMORE

Date: MAR 09 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:

[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. Any further inquiry must be made to that office.

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, Maryland, and is now before the Administrative Appeals Office 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 denial of the application was erroneous and arbitrary and capricious as there is sufficient credible evidence of the applicant's presence and residence in the United States.

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 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).

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence throughout the application process:

- A notarized affidavit from [REDACTED] indicating that the applicant was in her employ as a babysitter from September 1981 through October 1984.
- A receipt from Th [REDACTED] dated April 15, 1987.
- A notarized affidavit from [REDACTED] who attested to the applicant's residence in Los Angeles, California since 1982.
- A notarized affidavit from [REDACTED] who attested to the applicant's residence in Los Angeles, California since 1981. Mr. [REDACTED] asserted that he lived in the same apartment building as the applicant until May 1987.
- A notarized affidavit from [REDACTED] who indicating that the applicant was in her employ from December 1984 through November 1988 as a housekeeper.

- A letter from [REDACTED] who indicating that the applicant was in her employ as a housekeeper/babysitter from November 1981 through May 1983.
- Individual Income Tax Returns for 1985, 1986 and 1988

Counsel's assertion that the director failed to consider the applicant's personal income tax returns for 1985-1988 is without merit. The director mentioned in his Notice of Decision that the applicant had failed to submit evidence from the Internal Revenue Service establishing that the returns had in fact been filed. The Income Tax Returns have no evidentiary weight or probative value as they were not signed and were not certified as being filed.

Nevertheless, in this instance, the applicant submitted evidence, including contemporaneous documents, which tends to corroborate her claim of residence in the United States during the requisite period. The district director has not established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. 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.