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U.S. Citizenship
and Immigration
Services

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FILE:



Office: HOUSTON

Date:

OCT 28 2005

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:



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.

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, California, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The district director concluded that 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 based on inconsistencies in her testimony, sworn statement and documentation regarding her departures from the United States. Accordingly, the director denied the application.

On appeal, counsel puts forth a brief disputing the director's decision. Counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988.

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:

- An affidavit notarized June 17, 1990 from [REDACTED] who indicated that he met the applicant at church in March 1984 and attested to her residence at [REDACTED] [sic]
[REDACTED]
- An affidavit notarized June 6, 1990 from [REDACTED] who indicated that she met the applicant at church in July 1983 and attested to her residence at [REDACTED]
[REDACTED]
- An affidavit notarized August 8, 1990 from [REDACTED] who indicated that she met the applicant at church in February 1983 and attested to her residence at [REDACTED]
[REDACTED]

- An affidavit notarized April 13, 1990 from [REDACTED] who indicated that he met the applicant at church in August 1983 and attested to her residence at [REDACTED]
- Affidavits notarized December 17, 1990 and July 21, 1994 from [REDACTED] who indicated that the applicant resided with him and his family and shared expenses at [REDACTED] from December 1985 to May 1990.
- Affidavits notarized July 8, 1990 and August 12, 1995 from [REDACTED] who indicated that the applicant resided with him at [REDACTED] from January 1981 to November 1985.
- A letter notarized April 6, 1988 from [REDACTED] payroll manager of Prufrock Restaurants Inc. in Dallas, Texas who indicated that the applicant was employed from February 1981 to March 1986.
- An undated letter from [REDACTED] who indicated that the applicant was employed from May 1986 at V.C. Towers & Associates in Houston, Texas in housekeeping.
- An affidavit notarized September 14, 1995 [REDACTED] indicated that he met the applicant in 1988 and attested to her residence at [REDACTED]
- An affidavit notarized August 7, 1995 from [REDACTED] who indicated he was a co-worker of the applicant from May 1986 to January 1991 at V.C. Towers & Associates.
- An affidavit notarized August 19, 1995 from [REDACTED] who indicated that she has been acquainted with the applicant since 1984 as they resided in the same neighborhood.
- An affidavit notarized August 19, 1995 from [REDACTED] who indicated that he has been acquainted with the applicant since April 1983. [REDACTED] asserted that he met the applicant through her brother and has remained in contact with her since that time.
- An affidavit notarized August 10, 1995 from [REDACTED] who indicated that he has known the applicant since 1982.
- An affidavit notarized July 31, 1995 from [REDACTED] a co-worker who attested to the applicant's employment at Prufrock Restaurant from February 1981 to March 1986.
- An affidavit notarized July 21, 1995 [REDACTED] who indicated that she has known the applicant since 1981.

It is unclear why on October 28, 2002, the director only requested the applicant to submit an "original and notarized affidavit" from [REDACTED] as six of the other affidavits were also photocopied. The applicant, in response, provided [REDACTED] original affidavit.

The director issued a Notice of Intent to Deny dated November 18, 2002, advising the applicant that attempts were made to "telephonically verify several affidavits from individuals and businesses including [REDACTED] [REDACTED] but was unable to do so due to disconnected, incorrect and/or invalid phone numbers."

It is reasonable to conclude that affiants who had provided documents over seven to twelve years ago are no longer available at the same telephone number or address listed as a point of contact in an affidavit or letter. A variety of circumstances including relocation, business closure, or death could readily account for a failure to contact affiants.

The director, also advised the applicant of inconsistencies regarding her absences from the United States namely,:

- the applicant indicated on an undated Form I-687 application to have been absent from the United States from May 1, 1987 through May 15, 1987.
- on an Affidavit for Determination of Class Membership dated January 24, 1991, the applicant listed May 1, 1987 through May 15, 1987 as her only departure from the United States.
- at the time of her interview on January 21, 1992, for an extension of her employment, the applicant indicated that May 1, 1987 for a duration of 15 days as her only departure from the United States.
- on an Affidavit for Determination of Class Membership dated September 20, 1995, the applicant listed August 13, 1987 through August 30, 1987 as her only departure from the United States.
- The applicant indicated on her Form I-687 application dated November 21, 2000 to have been absent from the United States from May 1, 1987 through May 15, 1987 and from August 13, 1987 to August 30, 1987.
- At the time of her LIFE interview on October 28, 2002, the applicant admitted in a sworn statement that she only departed the United States in August 1987 for one month.

The applicant, on appeal, asserts that at the time of her interview in 2002, she was nervous and did not try to hide the fact that she had two departures from the United States. The applicant asserted that she forgot to include her May 1987 departure.

Although on five occasions, the applicant failed to mention *both* departures from the United States, neither departure exceeded *45 days*, and the aggregate of all absences did not exceed 180 days between January 1, 1982, and May 4, 1988.

The applicant's departure from the United States on December 29, 1988 is irrelevant as said departure occurred subsequent to the January 1, 1982 through May 4, 1988 requisite period and is not a basis for establishing eligibility. See 8 C.F.R. § 245a.15(c)(1).

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.