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FILE:



Office: DALLAS, TX

Date: **MAR 28 2006**

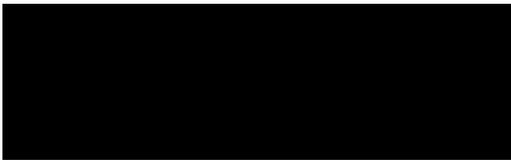
IN RE:

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. The file has been returned to the District Office. 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, TX, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 submitted evidence that substantially shows that she entered the United States before January 1, 1982 and that she continuously resided in the United States in an unlawful status from before 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. 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). Preponderance of the evidence has also been defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5<sup>th</sup> ed. 1979).

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).

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

- A Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act, stating that her first residence in the United States began in March 1981.
- A class membership questionnaire stating that the applicant first entered the United States in March 1981.
- A Legalization Fee Receipt from June 14, 1990.
- An affidavit from the applicant, dated May 22, 2002, stating that she entered the United States in April 1981 and had one trip outside the United States when she went to visit family in Mexico for two weeks. She then reentered the United States in April 1985.
- A second affidavit from the applicant, dated May 12, 2004, stating that she first entered the United States with her mother in April 1981. She was thirteen years old at that time. She states that after her mother's death a Ms. [REDACTED] became her caretaker. She states that in April 1985 she returned to Mexico to visit her family for two weeks and then returned to the United States. She explains that during an interview with an immigration officer in 1997 she stated that she entered the

United States in May 1985, referring to her last entry into the United States. She again affirms that her first entry was in April 1981.

- An affidavit from [REDACTED] dated May 8, 2004 stating that he has known the applicant for 23 years.
- An affidavit from [REDACTED] stating that the applicant lived with her in Dallas, TX from 1981 to October, 1985. In her affidavit she states that the applicant's mother was picked up by INS and sent back to Mexico. She states that the mother cannot come back to the United States.
- A letter from the applicant's employer, [REDACTED] from [REDACTED]. She states that the applicant was employed as a room attendant from November 14, 1985 to March 29, 1995.
- An affidavit from [REDACTED] stating that she lived with the applicant and has known her since November 1985.
- An affidavit from [REDACTED] stating that she has known the applicant since 1976 when they were friends in Mexico. She states that they both worked at the [REDACTED] in Addison and they have been in touch since 1982.
- An affidavit from [REDACTED] stating that she has known the applicant since July 1983.
- A marriage certificate showing that the applicant was married in Dallas, TX on November 20, 1989.
- Copies of birth certificates for her three sons and one daughter born in Dallas, TX in 1987, 1988, 1989 and 1992.
- Her son's baptismal certificate with a date of September 20, 1987.
- A letter from [REDACTED] stating that he met the applicant through a client at his insurance company in 1984. He states that she has been a client since 1994.
- Copies of medical documents showing dates from 1985 to 1988.
- An affidavit from [REDACTED] dated December 10, 2003 stating that the applicant has resided in the United States for 20 years. She states that she met the applicant through mutual friends at a party. They also worked together at the [REDACTED] and have remained close friends from August 14, 1981 to the present.
- An affidavit from [REDACTED] dated December 10, 2003 stating that the applicant has resided in the United States for 20 years. He states that he met the applicant through mutual friends at a party and he has known the applicant since August 14, 1981.
- An affidavit from [REDACTED] stating that she has known the applicant since 1983 and has an excellent relationship with her and her family.

- An affidavit from [REDACTED] stating that she has known the applicant since March 1984. They met in church and are in a church group together.
- An affidavit from [REDACTED] stating that he has known the applicant since November 1985 when they worked for the same company and that the applicant is married to one of his relatives.
- A purchase agreement showing a start date of July 15, 1986.

In this instance, the applicant submitted sufficient evidence in the form of statements and documentation to establish that she resided in the United States from 1985 to the present time. The applicant has not established that she resided in the United States from before or on January 1, 1982 through 1984.

In the district director's decision she states that in 1997 the applicant gave a previous sworn statement that she entered the United States in May 1985. A review of the record shows that this statement was made during an asylum interview. The asylum application states that that applicant's last entry into the United States was in May 1985. *Form I-589*, question 14, dated June 19, 1997. The interviewing officer's handwritten notes state that the applicant stated this entry was her first and only entry into the United States.

In contrast, the applicant states on her class membership questionnaire, dated June 13, 1990, that she first entered the United States in March 1981. On her application for status as a temporary resident, also dated June 13, 1990, the applicant states that her first residence in the United States was in March 1981. The applicant submitted an affidavit, dated May 12, 2004, stating that she first entered the United States with her mother in April 1981. She was thirteen years old at that time. She states that after her mother's death a Ms. [REDACTED] became her caretaker. She states that in April 1985 she returned to Mexico to visit her family for two weeks and then returned to the United States. She explains that when she stated that she entered the United States in May 1985, she was referring to her last entry into the United States.

The only evidence, aside from her own affidavits, submitted by the applicant to establish her residence in the United States from before January 1, 1982 are affidavits from [REDACTED] and [REDACTED]. The affidavits from Mr. [REDACTED] and Ms. [REDACTED] are fill-in-the-blank affidavits with extremely similar wording. The affidavit from Ms. [REDACTED] calls into question the circumstances surrounding the applicant's stay in the United States during the years 1981 to 1985. In the applicant's affidavit she states that her mother died and Ms. [REDACTED] then became her caretaker. In Ms. [REDACTED] affidavit she does not state that the applicant's mother died. She states that the applicant's mother was picked up by INS, sent back to Mexico and was unable to return to the United States. These conflicting stories, the lack of detailed affidavits and the sworn statement made during the asylum interview seriously weaken the credibility of the applicant's statement's regarding her entry into the United States in April 1981.

Therefore, the documentation provided by the applicant does not establish, 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 dismissed.

**ORDER:** The appeal is dismissed.