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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: HOUSTON Date: MAY 09 2006
MSC 01 353 60009

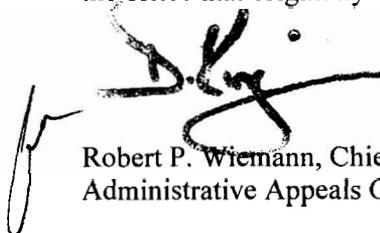
IN RE: Applicant: [REDACTED]

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: Self-represented

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

The district director concluded that the applicant's testimony during her interview was at variance with the information provided on her application, thereby casting credibility issues on her claim to have entered the United States prior to January 1, 1982. As such, the director denied the application.

On appeal, the applicant reaffirms her claim to have entered the United States in 1979. The applicant asserts that she completed elementary and secondary school in Mexico, which represents nine years of education.

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).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application.

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:

- An affidavit notarized October 25, 1990 from [REDACTED] who indicated that she has known the applicant since 1984, and attested to her character.

- An affidavit notarized December 20, 1990 from [REDACTED] of Eagle Pass, Texas, who indicated that the applicant was employed as a full-time housekeeper for her mother from December 1979, and was provided with room and board. [REDACTED] indicated that the applicant was in her employ as a housekeeper on the weekends commencing in January 1980.
- An affidavit notarized December 17, 1990 from [REDACTED] of Eagle Pass, Texas who indicated he has known the applicant since 1979.
- An affidavit notarized December 18, 1990, from [REDACTED] of Eagle Pass, Texas, who indicated that the applicant worked for his wife as a housekeeper from December 1979 until she passed away in March 1990. [REDACTED] indicated that the applicant was provided room and board.
- A letter dated October 25, 1990 from [REDACTED] pastor of Sacred Hearth Church in Eagle Pass, Texas, who indicated that he has personally known the applicant for many years, and attested to the applicant's employment with [REDACTED]

At the time of her interview on September 2, 2003, the applicant stated in a sworn statement:

I attended high school in Mexico. Total 12 years education in Mexico. After school, I worked for a Auto Parts company name Whitaker in Mexico for 3 years. This comapny make cable for car. I first entered U.S. in 9-1979 without inspection. After I came to U.S. I worked for [REDACTED] family from 1979 to 1990.

In his Notice of Intent to Deny dated September 19, 2003, the director noted that based on the applicant's date of birth coupled with her 12 years of education and three years of work experience in Mexico, her first entry into the United States was no earlier than 1984. The applicant, in response, reiterated the veracity of her claim to have entered the United States in 1979. The applicant stated that she could not obtain employment records from the auto parts company in Mexico, as it was no longer in business. The applicant also stated in part:

In a sworn statement, I stated that I completed elementary and secondary school in Mexico. In Mexico there are 6 years of elementary school or "primaria" and 3 years of secondary school or "secundaria." These are the basic academic studies required for all children. For those that want to go on to the University or who would like to stud some technical degree, there are two, three or four additional years of study known as "Preparatoria" which in English means preparatory (studies). There is no direct equivalent to the system of education in this country although most consider having competed primary and secondary studies as having finished basic schooling (9 years) and thus the equivalent here to having finished high school (12 years). I finished 9 years of study in Mexico. I do not have any further training.

The applicant's statement has been considered and is valid. Mexican law requires all children from the age of 6 through 14 to attend school. The Mexican education system is organized into four levels: preschool, compulsory basic education, upper secondary education, and higher education. After kindergarten, a child has six years of elementary school, followed by three years of basic secondary school.¹ Therefore, the applicant's entry into the United States in 1979 is plausible.

¹ <http://en.wikipedia.org/wiki/Mexico> and <http://www.aolsvc.worldbook.aol.com/wb/PrintArticle?id=ar358800>>.

On appeal, the applicant submits:

A notarized affidavit from [REDACTED] who indicates that she has known the applicant since February 1980. [REDACTED] attests to the applicant's character and to her employment with [REDACTED]

- An additional affidavit from [REDACTED] who reiterates his claim to have known the applicant since 1979. [REDACTED] reaffirms the applicant's employment with his wife from 1979 to 1990.

A notarized affidavit from [REDACTED] who indicates that he has known the applicant since 1979.

- An additional affidavit from [REDACTED] who reiterates her claim to have known the applicant since March 1979. [REDACTED] reaffirms the applicant's employment as a housekeeper with her mother and herself.
- An additional affidavit from [REDACTED] who reiterates his claim to have known the applicant since 1979. [REDACTED] reaffirms the applicant's employment with the [REDACTED] family in Eagle Pass, Texas.
- A notarized affidavit from [REDACTED] of Eagle Pass, Texas who indicates that he has known the applicant since 1979 in Eagle Pass.

The affidavits from [REDACTED] and [REDACTED] have little evidentiary weight or probative value as the affiants failed to provide a telephone number or address and, therefore, the affidavits are not amenable to verification by the Citizenship and Immigration Services.

Nevertheless, the applicant submitted evidence which tends to corroborate her claim of residence in the United States during the requisite period. As stated in *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the asserted claim 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 remaining 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.