

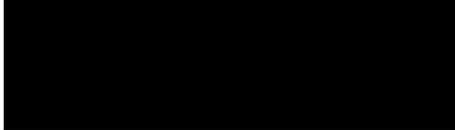
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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536



FILE:

Office: Baltimore

Date: JAN 13 2004

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: Attached is the decision rendered on your appeal. The file has been returned to the Baltimore 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 Acting District Director, Baltimore, and is now before the Administrative Appeals Office on appeal. The case will be remanded for further action and consideration.

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.

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).

The director concluded the applicant failed to establish he resided in the United States from January 1, 1982 through May 4, 1988. However, the director did not specify any deficiencies in the evidence furnished for that period, other than to say that affidavits by themselves, unsupported by accompanying primary documentation, are completely self-serving and lack credibility and objectivity.

Pursuant to *Matter of E--M--*, *supra*, the director cannot refuse to consider affidavits, or any form of evidence relating to the 1981-88 period. There are many factors the director may consider:

- Quality and extent of evidence;
- Inconsistencies between evidence and claims;
- Lack of contemporaneous documentation for certain periods when it is plentiful for other periods;
- Contradictions in information the applicant has provided on the application and on other forms such as Form I-687 Application for Status as a Temporary Resident, and Form G-325A Biographic Information;
- Lack of proof of entry for aliens from non-contiguous nations whose nationals normally enter the United States at ports-of-entry;
- Any ADP records which may disclose entries to and departures from the United States that aliens made but failed to disclose on their LIFE applications; and
- Lack of school records, or other evidence of enrollment, for minors.

The burden of proof is upon an applicant to establish he or she resided in the United States during the claimed period. The



applicant must submit some type of documentation which would support the claim. The director must address the evidence furnished and render a determination as to its credibility. It is not sufficient to simply state that the applicant has not overcome the grounds set forth in the intent notice. Any perceived shortcomings in the evidence must be specified in the director's notice of decision in order that the applicant may have an opportunity to file a meaningful appeal.

Accordingly, the case will be remanded for the purpose of a new decision addressing the above. If the new decision is adverse, it shall be certified to this office.

ORDER: The case is remanded for appropriate action and decision consistent with the foregoing.