



U.S. Citizenship  
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[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES

Date:

JAN 11 2007

MSC 02 045 61544

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. The file has been returned to the office which originally decided your case. 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 Acting District Director, Los Angeles, 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 he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel states that the director's decision was in error and that the applicant has established by a preponderance of the evidence that he resided unlawfully in the United States for the requisite period.

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).

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 petitioner 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 or petitioner 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 or petition.

Citizenship and Immigration Services (CIS) regulations provide an illustrative list of contemporaneous documents that an applicant may submit to establish presence during the required period. 8 C.F.R. § 245a.15(b)(1); *see also* 8 C.F.R. § 245a.2(d)(3)(vi)(L). Such evidence may include employment records, tax records, utility bills, school records, hospital or medical records, or attestations by churches, unions, or other organizations so long as certain information is included. The regulations also permit the submission of affidavits and any other relevant document, but applications submitted with unverifiable documentation may be denied. Documentation that does not cover the required period is not relevant to a determination of the

alien's presence during the required period and will not be considered or accorded any evidentiary weight in these proceedings.

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).

On November 14, 2001, the applicant filed this Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act. In order to establish continuous unlawful residence from before January 1, 1982, the applicant furnished school records, a high school diploma, immunization and other medical records, numerous letters and affidavits, payment booklets used by his parents for his medical care, and numerous other documents. These materials cover a period from 1980 through 2003.

On November 3, 2004, the director sent the applicant a Notice of Intent to Deny (NOID). The director stated that the applicant had not submitted sufficient evidence of unlawful residence. However, the director did not reference any of the evidence submitted or provide a reasoned explanation as to why it was insufficient.

In a response the applicant submitted additional school records, additional copies of medical records, affidavits and a letter from the applicant's Elementary School explaining the absence of original documents and attesting the applicant's attendance there as a pupil. The applicant also resubmitted certain medical records and immunization records.

On November 30, 2004, the director denied the application, citing inconsistencies in two of the personal knowledge statements submitted by the applicant. The decision by the director fails to address relevant and probative evidence submitted by the applicant and does not provide a reasoned explanation for the denial.

The applicant asserts he was two or three years old when he entered the United States with his parents, evidence in the record tends to corroborate this assertion. The explanation of evidence provided by the applicant, such as medical payment records and school records, are plausible given the age and status of the applicant. The applicant has submitted substantial, probative and credible evidence that he entered the United States with his parents prior to January 1, 1982, began attending elementary school, visited doctors periodically and graduated high school in 1996.

On appeal the applicant has resubmitted the evidence included in his response to the NOID. When viewed in its totality, the evidence contained in the record tends to corroborate the assertions of the applicant. The applicant has submitted a variety of contemporaneous evidence such as school and medical records, immunization records, secondary documentation showing that his parents were present and caring for him throughout his life in the United States, and numerous affidavits and letters attesting to the applicant's presence. There may be minor inconsistencies in the applicant's evidence as noted by the director, but these inconsistencies are minor when viewed in the totality of the evidence presented. Even if the director has some doubt about the applicant's qualifications the evidence in the record establishes by a preponderance of the evidence that the applicant was present in the United States and being raised by his parents.

The director did not provide a reasoned explanation evaluating the relevance, probative value and credibility of the submitted evidence and his decision is thus arbitrary. The evidence that has been furnished by the applicant accords substantial evidentiary weight to the applicant's assertions, and is sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period. The decision of the director will be withdrawn and the appeal will be sustained.

Accordingly, the appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

**ORDER:** The appeal is sustained.