

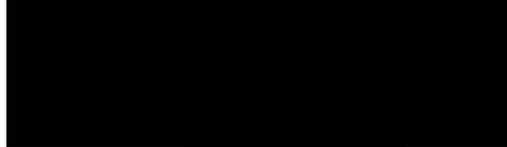
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U.S. Citizenship  
and Immigration  
Services

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FILE:



MSC 02 244 61360

Office: NEW YORK Date: NOV 04 2008

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 National Benefits Center. 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 "R. 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 District Director, New York, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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 since before January 1, 1982 through May 4, 1988. The director noted an inconsistency in the applicant's testimony and application.

On appeal the applicant asks that CIS reconsider his application.

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).

An applicant must establish eligibility by a preponderance of the evidence. 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.

On May 14, 2007, the director sent the applicant a Notice of Intent to Deny (NOID), which stated that the evidence submitted by the applicant was insufficiently probative of continuous unlawful residence in the U.S. from prior to January 1, 1982 through May 4, 1988, and continuous physical presence in the U.S. from November 6, 1986 through May 4, 1988.

The applicant did not respond.

On June 27, 2007, the director denied the application because the applicant had failed to establish his continuous unlawful presence during the required period.

On appeal the applicant asks that CIS reconsider his application.

Some of the documentation submitted covers time after the required period and are not relevant to these proceedings.

Relevant to the period in question the record contains the following evidence:

- (1) Statement by [REDACTED] asserts the applicant has been living in the United States since 1986.
- (2) Statement by [REDACTED] asserting he saw the applicant selling flowers and newspapers in 1981
- (3) Statement by [REDACTED] asserting she met the applicant in 1981 while he worked at Bengal Food Enterprises.
- (4) Statement by [REDACTED] asserting the applicant worked at his restaurant Bengal Food Enterprises from June 1981 to September 1990.
- (5) Statement by [REDACTED] asserting the applicant worked at his restaurant and bar the Boca Pub from October 1990 to February 1991.
- (6) Statement by [REDACTED] asserting he has known the applicant since the early '80s when he sold flowers, and that, as of the date of the statement he was an auxiliary police officer for the 114<sup>th</sup> precinct.
- (7) Statement by [REDACTED] asserting he met the applicant in the early '80s, asserts he is a best friend and that they joined the Auxiliary police force together.
- (8) Statement by [REDACTED] asserting she has known the applicant since the early '80s when he used to sell flowers, and that when the applicant drove a cab he drove her back and forth to work every day.
- (9) Statement from [REDACTED] asserting he picked the applicant up from the airport on June 18, 1983.

As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation. The minimal evidence furnished cannot be considered extensive,

and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.12(e).

Documents which generically assert an affiant has known an applicant since a particular year are not sufficiently probative to support assertions of eligibility. Such casual knowledge of an applicant lacks the context to be sufficiently probative such that CIS can make an informed determination that the applicant has been residing continuously in an unlawful status for the duration of the required period. CIS appreciates the statements that have been submitted on behalf of the applicant, and acknowledge the contribution that he has made to his community and the United States. Unfortunately the record does not support eligibility, and an applicant must demonstrate eligibility in order to be legalized under the LIFE program.

In this case the documents provided are simply not sufficiently probative to establish the applicant's eligibility. Many of the affiants assert knowing the applicant from 'the early '80s,' or for some period after January 1, 1982. These documents create further confusion by indicating that the applicant has lived in Astoria for the entire duration of his residence in the United States when it's clear the applicant spent time in Florida (Nos. 6, 7, 8 above). The general natures of the statements are not sufficient to provide a detailed picture of the applicant's whereabouts and activities during the required period such that CIS can make an informed decision about the applicant's eligibility. The documents do not indicate that the affiants have actual personal knowledge of the applicant's whereabouts and activities, and are primarily testaments to the applicant's character. For this reason the statements submitted in lieu of primary evidence are not sufficiently probative clarify the noted inconsistencies and establish eligibility.

Accordingly, the applicant has not established the eligibility and the appeal will be dismissed.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.