



U.S. Citizenship
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FILE: [REDACTED]
MSC 02-022-64988

Office: NEW YORK

Date: **SEP 22 2008**

IN RE: Applicant: [REDACTED]

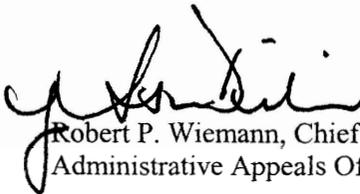
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* LIFE Act Amendments, Pub. L. 106-554. 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.


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, on September 25, 2007. The decision is now on appeal to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director determined that the applicant had not provided evidence to adequately establish that he resided in the United States in a continuous, unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act, or that he had been continuously physically present in the United States from November 6, 1986 through May 4, 1988, as required by section 1104(c)(2)(C) of the Life Act. The director noted that the affidavits submitted appeared not to be credible and were not amenable to verification.

On appeal, counsel asserts that the affidavits that have been submitted are credible and are amenable to verification.

An applicant for permanent resident status under section 1104 of the LIFE Act (Life Legalization applicant) 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 through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States, and is otherwise eligible for adjustment of status under section 1104 of the LIFE Act. 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 states that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* at 80. 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 either to request additional evidence, or if that doubt leads the director to believe that the claim is probably not true, to deny the application or petition.

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. § 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.13(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. *See* 8 C.F.R. § 245a.14. In this case the applicant applied for such class membership by submitting a "Form for Determination of Class Membership in *CSS v. Meese* [CSS lawsuit]," accompanied by a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)," dated June 5, 1991. On October 22, 2001 the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to section 1104 of the Life Act (I-485 LIFE Legalization Application).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing, by a preponderance of the evidence, his claim of continuous unlawful residence in the United States during the requisite period. Upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

The applicant has provided the following evidence relating to the requisite period:

An affidavit dated July 24, 2004 from [REDACTED] in which he stated that he has known the applicant since 1982 and that he has visited the applicant at [REDACTED] in Brooklyn, New York.

An affidavit dated July 26, 2004 from [REDACTED] in which he stated that he has known the applicant since May of 1985, that he is the applicant's relative, and that they were roommates at [REDACTED] from 1985 to 1990.

- An affidavit dated July 27, 2004 from [REDACTED] in which he stated that he confirms that the applicant has been a resident of New York since 1986 and that the applicant is law abiding.
- An affidavit dated July 27, 2004 from [REDACTED] in which he stated that he is a friend of the applicant and has known him since 1987.

On appeal, counsel reasserts the applicant's claim of eligibility for the immigration benefit sought and submits an affidavit dated September 17, 2007 from [REDACTED] in which he reiterates his statements contained in his affidavit dated July 24, 2004.

The affiants fail to provide details regarding their claimed friendships with the applicant. They fail to provide any information that would indicate personal knowledge of the applicant's entry into the United States prior to January 1, 1982, the frequency with which they saw and communicated with the applicant, the applicant's places of residence or the circumstances of his residence during the requisite period. Although the affiants claim to have known the applicant during the requisite period, they fail to note how or where they met him. It is also noted that none of the affiants claim to have known the applicant prior to 1982. Lacking relevant details, these affidavits have minimal probative value.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to lack credibility or to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. The affidavits in the record are too bereft of sufficient detail to be found credible or probative. Not one affiant indicates credible personal knowledge of the applicant's entry into the United States prior to January 1, 1982 or credibly attest to his continuous residence. The duplicative language and the failure to meet statutory standards also detract from the probative value of some of the affidavits.

The AAO finds that, upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the applicant has not shown by a preponderance of the evidence that he continuously resided in the United States for the requisite period.

Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the lack of credible supporting documentation and the lack of detail, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act.

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