



U.S. Citizenship
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FILE: [Redacted]
MSC 02 044 60579

Office: NEW YORK

Date: **JUL 03 2008**

IN RE: Applicant: [Redacted]

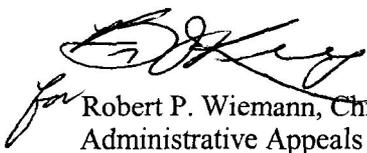
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[Redacted]

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.


for 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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to establish that he entered the United States before January 1, 1982.

On appeal, counsel submits a brief statement and an affidavit from the applicant.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 states 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 district 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 district director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the district 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 district director can articulate a material doubt, it is appropriate for the district director to either request additional evidence, or if that doubt leads the district director to believe that the claim is probably not true, deny the application or petition.

The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documents

that an applicant may submit. While affidavits “may” be accepted (as “other relevant documentation”) [See 8 C.F.R. § 245a.2(d)(3)(vi)(L)] in support of the applicant’s claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant’s unlawful continuous residence during the requisite time period.

On October 24, 2001, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

On February 12, 2004, the applicant was interviewed in connection with his I-485 application. At that time, the applicant stated that he had first entered the United States in April 1981 without inspection by crossing the United States/Canada border, and that he had continuously resided in the United States in unlawful status until April 10, 1985, when he returned to Guyana. He subsequently re-entered the United States on May 16, 1985, as a nonimmigrant visitor for pleasure (B-2). He applied for and was granted a change of his nonimmigrant status from a B-2 nonimmigrant to an A-2 nonimmigrant (spouse of an official or employee accredited by a foreign government) on December 16, 1985.¹ He further stated that he departed the United States for a vacation to Canada of less than 30 days in July 1988, and returned to the United States in status as an A-2 nonimmigrant.

In a Notice of Intent to Deny (NOID), dated September 22, 2006, the district director determined that the evidence contained in the applicant’s passport contradicted his testimony, and that the documentation submitted showed that he did not enter the United States prior to May 16, 1985. The district director specifically noted that the applicant’s passport showed the following: the passport was issued in Guyana on July 1, 1983; the applicant departed Guyana on August 25, 1983; the applicant departed Guyana on January 26, 1984, and entered Barbados; the applicant returned to Guyana on January 28, 1984; the applicant departed Guyana and entered Trinidad on June 1, 1984; the applicant departed Trinidad and entered Guyana on June 2, 1984; the passport was updated in Guyana on April 10, 1985; a B-2 nonimmigrant visa was issued to the applicant in Guyana on April 16, 1985; and, on May 16, 1985, the applicant departed Guyana and entered the United States.

The district director granted the applicant 30 days to submit additional evidence in response to the NOID.² Neither the applicant nor his attorney or record responded to the request. Therefore, on November 9, 2006, the district director denied the application for the reasons stated in the NOID.

On appeal, counsel asserts that the denial decision “is against the laws and facts of the case.” In support of the appeal, counsel submits an affidavit from the applicant stating that his trip to Guyana to apply for a visa (presumably the B-2 visa) in 1984 was “brief, casual and innocent,” and that he stayed only for three weeks. He also states “at the time the passport was mailed” to him in Guyana,

¹ The record reflects that the applicant’s spouse, [REDACTED], was employed by the Guyana Consulate in New York, New York, in status as an A-2 nonimmigrant, from April 1987 until her resignation in September 1991.

² The NOID was mailed to the applicant at his address of record (his current address) and a copy was mailed to his attorney of record. The NOID sent to the applicant was returned with the notation “Return to Sender/Unclaimed/Unable to Forward).

he was not physically present in the country – “it was mailed to [him] because [he] had an address in Guyana for the passport to be mailed.” He further states that his “entry into the United States prior to 1984 was without documentation,” and that his “visit to Barbados and Trinidad was short – only a day or two. [He] departed the United States briefly for an emergent reason.” The applicant concludes by reasserting his claim that he “was continuously present and residing in the United States since before 1982.”

A review of the record reveals that the applicant submitted the following documentation in an attempt to establish his entry into the United States prior to January 1, 1982:

- Three affidavits from [REDACTED], of Plantation, Florida: (1) dated January 7, 1992, stating that he rented a property in Plantation, Florida, to the applicant at the rate of \$300.00 per month from April 1981 to the date the affidavit was signed; (2) dated January 8, 1992, stating that the applicant stayed with him from 1981 to 1984, helping around the house, and that in the beginning of 1985, the applicant moved to New York; and (3) dated January 24, 1992, stating that the applicant was employed by him as a handyman at \$80.00 per week from 1981 to 1984.
- An affidavit, dated February 10, 2004, from [REDACTED] of Boca Raton, Florida, stating that the applicant had been residing in the United States since 1981 - except for a brief departure - first in Plantation, Florida (from 1981 to 1984), then in Brooklyn, New York (from 1985 to 1991), and then in Ft. Lauderdale from 1991 to 1992. She states that while the applicant was living in Florida, they would get together almost every weekend and socialize. She further states that she has personal knowledge that the applicant worked for [REDACTED] from 1981 to 1984 as a housekeeper.

There are numerous discrepancies between the claims of the applicant and the documentation contained in the record. The applicant claims to have entered the United States without inspection in April 1981. At interview, he claimed not to have left the United States until April 1985 in order to travel to Guyana to obtain a visa. However, on appeal, he states that he traveled to Guyana in 1984 to apply for the visa. The photocopies of his passport indicate that he obtained a passport in Guyana in 1983, and was also in that country in 1984 and 1985. The record also reflects that the applicant has a son born in Guyana in June 1983.

Furthermore, the applicant’s reliance on the affidavits of only two affiants is not persuasive. While not required, the affidavits are not accompanied by proof of identification or any evidence that the affiants actually resided in the United States during the relevant period. The affidavit from Ms. [REDACTED] is vague as to how she dates her acquaintance with the applicant, how often and under what circumstances they had contact during the requisite period, and lacks details that would lend credibility to her alleged 23-year relationship with the applicant. It is unclear as to what basis she has direct and personal knowledge of the events and circumstances of the applicant’s residence in the United States. As such, the statement can be afforded minimal weight as evidence of the applicant’s residence and presence in the United States for the requisite period. It is also noted that

the affidavits from [REDACTED] are not consistent. In the first, he states that he rented a property to the applicant at \$300.00 per month from 1981 to 1992; in the second, he indicates that the applicant lived with him helping around the house from 1981 to 1984; and in the third, he states that he paid the applicant \$80.00 per week.

Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

It is concluded that the applicant has failed to establish, by a preponderance of the evidence, that he entered the United States prior to January 1, 1982, and resided in continuous unlawful status in the United States from that date through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. Given this, he is 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.