

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



L2

DATE: JUL 05 2012 Offices: DETRIOT

FILE:



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. 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.


Perry J. Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Field Office Director (director), Detroit, Michigan. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant had failed to establish by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was physically present in the United States from November 6, 1986, until the date of filing the application.

On appeal, counsel claims that the director did not issue a Notice of Intent to Deny (NOID) prior to denying the Form I-485 application.¹

The AAO notes counsel's claim however, the regulation at 8 C.F.R. § 103.2(b)(8) requires a deciding official to request additional evidence only in instances "where there is no evidence of ineligibility, and initial evidence or eligibility for further information is missing." The director is not required to issue a request for further information in every potentially deniable case. If the director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation. In addition, the director had issued a NOID on a corresponding Form I-687 application based on the same facts and evidence as the Form I-485 application.

Furthermore, even if the director had committed a procedural error by failing to issue a separate NOID for the Form I-485 application, it is not clear what remedy would be appropriate beyond the appeal process itself. On appeal, the applicant has the opportunity to present additional evidence in support of his Form I-485 application and the AAO finds our consideration of the evidence to overcome any possible error on the part of the director.

On appeal, counsel also requested a copy of the Record of Proceedings (ROP) and stated that he would submit a brief and/or additional evidence to the AAO within 30 days of receiving the ROP. The record reflects that the ROP, requested on May 16, 2011, was processed on January 25, 2012,² and counsel has submitted no brief and/or additional evidence; therefore the record will be considered complete and the decision will be made based on the evidence of record.

¹ The record reflects that in reaching a decision on the current matter the director referenced the NOID issued to the applicant on an accompanying Form I-687 (Application for Status as a Temporary Resident) and the applicant's response to the NOID. The record also reflects that the issues in the two applications are the same and that the director denied the Form I-687 on the same date as the current application. The record further reflects that the basis of the denial and the documentation discussed by the director in the Form I-687 NOID is the same documentation discussed by the director in the Form I-485 application.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

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 its amenability to verification. See 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 applicant 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 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.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. See 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant filed an application for legal permanent resident status under the LIFE Act (Form I-485) on December 3, 2001. In support of his application, the applicant submitted statements and affidavits from witnesses attesting to the applicant’s residence and physical presence for all or a part of the requisite period.

The record reflects that on April 14, 1989, the applicant attempted to enter the United States by fraud or the willful misrepresentation of a material fact, to wit, the applicant presented a passport and a nonimmigrant visa belonging to another person, [REDACTED]. The applicant was placed in removal proceedings and a sworn statement taken. The applicant stated at that interview, that he first came to the United States on July 2, 1988, and that he remained in the country for one

