

State of New York

Affidavit in Support
of Form I-485

County of Kings

I, Lester, being duly sworn, depose and say:

1. I am making this affidavit in support of the Form I-485 application for permanent resident status, based on my marriage to Sherri, that I am filing with the United States Citizenship and Immigration Service (USCIS), New York District Office. More specifically, I am making this affidavit to explain my affirmative answer to Question 1(b) in Part 3C of the Form I-485.

2. In answer to the question concerning whether I have ever been “arrested, cited, charged, indicted, fined or imprisoned for breaking any law or ordinance, excluding traffic violations,” on August 12, 2004, I was issued a summons citing a violation of Section 10-125 (2b) of the N.Y.C. Administrative Code, entitled “Consumption of Alcohol on Streets Prohibited” (also known as “Open Container Violation” or “Consumption of Alcohol in Public”). This summons, a copy of the front and back of which is attached to this affidavit as Exhibits 1A and 1B, respectively, and made a part hereof, requires me to appear in N.Y. City Criminal Court, at 346 Broadway in Manhattan, on October 13, 2004. On that date I plan to plead guilty and pay a \$25.00 fine.

3. In paragraphs 4 through 6 below, I explain why I have not already pled guilty and paid the fine, that is, why I have not taken advantage of a new and expeditious procedure for pleading guilty and paying the fine by mail. In paragraph 7, I describe the circumstances leading to the issuance of the violation, admitting my culpability but insisting that my motive was non-transgressive. At the outset, I should point out that the offense in question is “a violation, not a crime,” as noted in the the N.Y. City Police Department Form PD 260-111 (3-03), a copy of which is attached hereto as Exhibit 2 and made a part hereof.

4. On September 5, 2004, my wife and I consulted and retained Mr. Oscar Abraham Jaeger, attorney at law, for the purpose of assisting us to file the Form I-485 and to represent us at the adjustment of status interview. Mr. Jaeger had been very helpful to us previously, when my wife retained him to assist us with the filing of her Form I-129 Petition for Alien Fiancé(e). When we saw Mr. Jaeger on September 5, we informed him of the existence of this violation, showed him the summons, and explained the circumstances that led to the issuance of this summons. Later that day, Mr. Jaeger went on the Internet and searched for the applicable law, finding it most prominently and relevantly discussed on the website of the New York State Unified Court System, in the section entitled New York City Criminal Court, Special Projects. The precise website is: www.courts.state.ny.us/courts/nyc/criminal/specialprojects.

5. According to the above website, pursuant to a Special Project entitled “Plea by Mail Program” that became effective July 1, 2004, “individuals who receive a Criminal Court Summons citing a violation of Section 10-125 (2b) of the N.Y.C. Administrative Code - “Consumption of Alcohol on Streets Prohibited” (also known as “Open Container Violation” or “Consumption of Alcohol in Public”) are eligible to plead guilty and pay a \$25 fine by mail. This program is available to persons charged with this petty offense only, and only if no other summonses are issued to the individual at the same time.” The website emphasizes the fact that “If you plead guilty by mail, you do not need to appear in Court.” However, one of the requirements of this program is that a completed and signed plea form, namely the aforementioned Police Department Form PD 260-111 (3-03), together with the summons and fee payment, “must be mailed within 10 days of the date that the summons was issued.” Had I known of the existence of this new program at the time the summons was issued to me, I would gladly have paid the fine promptly and thereby be done with this matter. Unfortunately, I first learned about this program only on September 5, when Mr. Jaeger discovered its existence and told me about it. By that time it was well past 10 days since the August 12 issuance of the summons, making it too late for me to participate in the program. This is unfortunate, since I was otherwise fully qualified to participate, having no other criminal record of any kind.

6. I will begin to explain my prior ignorance of this program by directing the reader to the back page of the summons that was issued to me, attached hereto as Exhibit 1B. As the reader will note, this summons itself provides no clue as to the existence of this program. On the contrary, even though this summons was issued after the effective date of the program, it is an older form that provides outdated and, indeed, counterfactual/misleading information. According to this outdated form, to plead guilty and pay the fine I must appear in court. The corrective to this outdated form is the aforementioned Police Department Form PD 260-111 (3-03). As this Form itself states, "This form must be issued along with a summons, in lieu of an arrest, only for violation of Administrative Code Section 10-125(b), Consumption of Alcohol in Public." This Form should have been issued to me along with the summons, but was not. Had the summons itself contained, or been accompanied by a form that contained, an up-to-date and correct statement of the procedures to be followed, this matter would already have been taken care of, instead of awaiting my appearance in court.

7. With nearly 29 years of experience as a police officer enforcing the law in my native country of Guyana, I am well acquainted with the fact that "ignorance of the law is no excuse." For that reason, since I was guilty of the violation, I plan to plead accordingly and pay the applicable fine. By the same token, however, I am well acquainted with the fact that the intent and motive of the perpetrator of an act are measures often relevant to the legal significance of that act, often defining the very nature of the transgression involved, and that these measures are always relevant in evaluating the moral, as distinct from the legal, significance of the act. For that reason, I would like to state for the record that I did not realize at the time that I was engaged in a transgression of the law. In Guyana, it is not only not a crime, it is not even a violation, to drink alcoholic beverages in public, although, of course, such drinking can become a violation or even a crime if the drinker then engages in disorderly or violent conduct. By contrast, in N.Y. City, if you drink a beer in public, as I did that day, even if the bottle of beer is in a brown paper bag and thus essentially invisible, you are subject to being cited with a violation. It does not matter that you are behaving in an orderly manner, are not drunk, and are just enjoying, as I was, the company of an old friend from your native country, a man whom you have not seen for many years and whom you encounter unexpectedly while on a pleasant stroll with your bride through the streets of your new neighborhood, a friend who drinks a beer with you while you remember old times, even as you absorb

this dazzling new City called New York. You live and you learn, sometimes the hard way.

Lester

Sworn to before me this
day of September, 2004

Notary Public