

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090
MAIL STOP 2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2



FILE:

Office: CHICAGO

Date: DEC 02 2008

MSC 02 071 61811

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Chicago, 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.

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.

In December, 2003 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 record does not contain a response from the applicant.

On May 20, 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.

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

- (1) Document labeled as a lease agreement, listing the applicant as a tenant for a property in Flushing, New York, from November 20, 1981 until November 19, 1986, extended until November 19, 1988.
- (2) Statement from [REDACTED] asserting he has personally known the applicant since 1982.
- (3) Statement from [REDACTED] asserting the applicant had worked for "the above mentioned establishment" from January 10, 1992 until the present (November 3, 2001). The generic letter lists [REDACTED] on [REDACTED] in Chicago, Illinois.
- (4) Statement by [REDACTED] asserting the applicant has been known to him since 1982.
- (5) Statement by [REDACTED] asserting the applicant is personally known to him since 1982.

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. In this case the documents provide list inconsistent areas of residence for the applicant, are generic in nature and fail to fully explain how the affiants came to know the applicant and what the nature of the relationships were. The documents and affidavits submitted are internally inconsistent, generic in nature, and lack credibility.

The AAO would note that the alleged lease at No. 1 above does not appear to be authentic. The document itself lists the same address for the landlord, the leased premises, and the applicant's current address, and based on the lease provisions was extended through 1988, despite the fact that the applicant would later claim to have moved to Chicago by 1986.

The affiant at No. 4 above asserts he has known the applicant since 1982, but fails to explain how this is so since the applicant did not move to Chicago until 1986 or 1988, depending on which version of the facts the applicant is asserting. This document does not appear to be credible.

The document at No. 3 above is contradicted by the applicant's Biographic Questionnaire which states that he worked for "Best Sub" on South Racine in Chicago, from September 1999, to November 2001.

The applicant has previously submitted an I-687, Application for Temporary Resident, which included a number of documents contradicting the evidence submitted by the applicant for his LIFE Act application. Chief among these are a letter by [REDACTED] asserting the applicant had worked for "the above named establishment" – listed as [REDACTED] – from September 9, 1990, and not January 10, 1992, as attested to in a more recent statement. Thus, the documentation submitted by the applicant does not appear credible.

Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.*

Given the lack of credible supporting documentation and the inconsistencies noted in the record, 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.