

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:



MSC 02 235 61685

Office: NEW YORK Date:

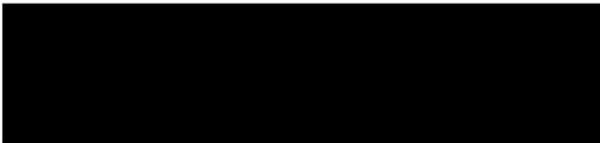
DEC 02 2008

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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, New York, 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. The director noted an inconsistency in the applicant's testimony and application.

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.

On June 4, 2007, 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 applicant submitted a written response on July 2, 2007.

On September 18, 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) **Statement by** [REDACTED] asserting that the applicant would "occasionally" come to attend religious gatherings at Ahlulbayt Mosque in Brooklyn, New York, since 1982.
- (2) Document, resembling a hand-written receipt for a retail sales purchase and bearing the date "05/03" 1986.
- (3) Statement by [REDACTED] asserting that he met the applicant in 1985 at religious gatherings, and was told by the mosque that the applicant had been attending since 1982.
- (4) Statement by [REDACTED] asserting he met the applicant in 1985, and that the applicant had told him he had been in the United States 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).

The applicant has not submitted any primary evidence, and relies entirely on affidavits to establish eligibility for the required period. However, documents which generically assert an affiant has known an applicant since a particular year are not sufficiently probative to support assertions of eligibility. Casual acquaintance with an applicant such as meeting someone at a party, seeing them in church, or seeing them on the street corner or a store, is not sufficient to demonstrate that such affiant has actual direct knowledge of an applicant's continuous, unlawful residence for the duration of the required period. Testimony based on second-hand knowledge is not amenable to verification and is not credible. In this case the affiants admit that they did not have actual, direct knowledge of the when the applicant arrived, but were told by the applicant and a third party. The letter at No. 1 above does not meet the criteria for a church attestation

letter pursuant to 8 C.F.R. § 245a.2(d)(3)(v), and without the original seal or letterhead the document is not credible.

The applicant has alleged a minimal body of facts in an attempt to satisfy the criteria for legalization, leaving CIS with no context in which to verify or corroborate his assertions. Without the context in which to view the applicants assertions they appear isolated factually, do not present an overall picture of the applicant's residence and presence, are not corroborated by other assertions contained in the record, nor are they amenable to verification. When the facts asserted in the record are viewed in their totality with the evidence presented they are not sufficiently supported to establish eligibility.

The record also reveals inconsistent testimony with regard to the applicant having children in Pakistan. On his I-687, Application for Adjustment to Temporary Status, the applicant alleged that he had two children born in Pakistan in 1987 and 1990, and yet he only states that he left the United States once in 1983 and returned with a visitor visa. The applicant also stated such on March 30, 2004. The applicant has not provided any evidence of this departure, any evidence of his travel abroad, any evidence of his subsequent travel to return to the United States, or any evidence that he re-entered the United States, and CIS records do not show an entry into the United States with a visitor visa. The applicant has not provided documentation (including passport entries, children's birth certificates, bank book transactions, letters of correspondence, authentic employment records, medical records, a Social Security card, or automobile, contract, and insurance documentation) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (I) and (K). The documentation provided by the applicant consists solely of statements by three persons and a hand-written receipt for a retail purchase, and do not explain the applicant's inconsistent testimony and the facts in contradiction to his assertions.

The hand-written receipt submitted by the applicant is not sufficiently credible to warrant any evidentiary weight. Because there is no other means by which to verify the accuracy or authenticity of such documents, they are not considered credible evidence. Applications submitted with unverifiable documentation may be denied. An agency may make reasonable empirical assumptions based on its experience and history of its regulatory management its field. *NLRB v. Curtin Matheson Scientific, Inc.*, U.S. 775 (1990).

The complete and utter lack of detail concerning the applicant's entries into the United States, as well as his whereabouts and activities during the required period, reflects poorly on his assertions of continuous unlawful residence and presence and rise to the level of a negative presumption of eligibility. The general evasiveness of the applicant's testimony, the fact that the applicant has alleged only a minimal body of facts necessary to satisfy eligibility criteria, and the manner in which they are contrived to avoid verification further raise doubts about the veracity of his assertions. As noted by the director, the evidence submitted is not sufficiently credible or probative to lend any weight to the applicant's assertions. It is not clear from the documents themselves that the applicants did have actual direct knowledge of the facts to which they were testifying. As an example, in the Statement submitted by [REDACTED] he states that he met the applicant in 1985, and that the applicant told him he had been in the United States since

The applicant has submitted no credible evidence which corroborates his assertions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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.