

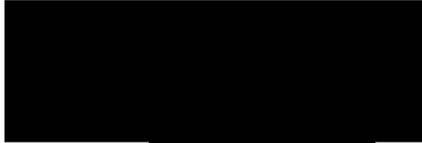
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 173 63100

Office: NEW YORK Date: **NOV 04 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:

Self-represented

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 "R. Wiemann".

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, 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.

Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, the individual named is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

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 April 16, 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 and some additional evidence.

On May 26, 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.

Some of the evidence in the record is for a period after the required dates, or is so lacking in details that it is not relevant to these proceedings.

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

- (1) Statement, bearing the name _____ asserting the applicant is personally known to him as his best tenant.
- (2) Statement, bearing the name _____ asserting the applicant is personally known to him as his best tenant.
- (3) Statement, bearing the name _____ asserting the applicant is personally known to him as his best tenant.
- (4) Statement by _____ asserting to be acquainted with the applicant through social gatherings and other occasional meetings such as weekly prayers in the mosque. This document contains some dates that have been clearly altered with regard to the longest period of absence for the applicant.
- (5) Document bearing the name _____ asserting the applicant worked for his company _____
- (6) Document signed by _____ asserting the applicant worked for his company from the December 15, 1981 to July 12, 1987.

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 submitted are suspicious in nature, as the first three all bear the same generic statement in the same handwriting, and the documents at Nos. 2 and 3 are not signed. These documents are rejected as credible evidence.

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.*

Other evidence submitted is similarly lacking in detail and credibility. Neither of the affiants claiming the applicant worked for them has supported their statements with corroborating evidence, nor do their statements satisfy the criteria for employment letters. 8 C.F.R. § 245a.2(d)(3)(i).

The document at No. 4 above has a clearly altered date, and it appears as if it has been Xerox copied over several times to obscure corrections. These few documents are so general in nature that they provide little probative information about the applicant's whereabouts and activities during the required period. The applicant must submit *evidence* of his eligibility. When no primary documentation has been submitted which can substantiate the applicant's claims, an applicant may submit other relevant documentation such as affidavits. Submitting a third party statement in lieu of evidence requires that such statement consist of more than the simple statement such as "The applicant is my best tenant." Without sufficient detail providing context to a statement, and the ability of CIS to verify the details of a statement, it is merely an unsupported statement and does not constitute evidence.

The general lack of detail concerning the applicant's whereabouts and activities during the required period reflects poorly on his assertions of continuous unlawful residence and presence. 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 applicant's 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, and are not amenable to verification. As an example, the document at No. 6 above is implausible since, according to this affidavit, the applicant would have entered through Canada from Bangladesh and began working for the affiant in Brooklyn, New York, the very same day, up until the day the applicant claims he left on vacation for Canada on July 15, 1987. The general lack of information and corroborating details in the record leave this statement factually isolated and gives it the appearance of having been fabricated

solely for the purpose of this application. In light of the other questionable evidence in the record this document is not sufficiently credible.

The discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the applicant's eligibility is not credible. Accordingly, the applicant has not established the eligibility and the appeal will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.