



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

MSC 02 161 61132

Office: PROVIDENCE

Date: OCT 03 2008

IN RE: Applicant:

[REDACTED]

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:

[REDACTED]

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.

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, Providence, 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 December 15, 2006, 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 did not respond.

On June 27, 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) Letter, dated July 17th, 2004, signed by [REDACTED], asserting that the applicant came to live with him in early 1982.
- (2) Letter, dated September 9, 2004, signed by [REDACTED] asserting that he knew the applicant in "early 1981" as a street vendor.
- (3) Affidavit, signed on March 16th 1990, signed by [REDACTED], asserting that he had met the applicant at a local mosque "several years" ago, and yet also testifies that he knew the applicant to live at [REDACTED] in New York from January 1981.
- (4) Affidavit, dated April 28th 1990, signed by [REDACTED], asserting he has known the applicant for nine years and listing his address at [REDACTED], New York.
- (5) Letter, dated March 17, 1990, signed by [REDACTED], asserting he has known the applicant since January 1981 and that he lived in the Bronx, New York.
- (6) Letter, dated April 24th, 1990, signed by [REDACTED] asserting he has known the applicant since April 1981 when they met at the Islamic Center in Manhattan.

Counsel's assertion that the applicant has submitted extensive evidence is a blatant mischaracterization. The applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv). The applicant also has not provided documentation (including example money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, 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. These third-party affidavits lack sufficient verifiable details to lend any credibility to the assertions contained therein, much less to corroborate the applicant's assertions of eligibility. On appeal counsel fails to submit any additional evidence, or to cite to any authority in support of his assertions. Without documentary evidence to support his claims, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation. The minimal evidence furnished in this case 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 addition, casual relationships with an applicant such as having 'met at a party' or 'saw him everyday' as a street vendor leaves significant doubt that an affiant has sufficient personal knowledge of an applicant to testify about his specific date of entry into the United States and continuous unlawful residence for any extended period. As an example, in the boilerplate affidavit listed at No. 3 above the affiant ambiguously testifies he met the applicant several years ago – requiring CIS to speculate what this might mean given the date of the affidavit is 1990 – and yet the form is filled out to indicate he had personal knowledge of the applicant's address in 1981. In this case the documents 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 above contain other irregularities. The document at No. 5 above was dated March 17th, 1990, and yet the Notary Public lists the date as June 2, 1990. The document listed at No. 6 above bears a date of April 24th, 1990, and yet the notary's date lists June 12, 1990. The inconsistencies in these dates raises doubts about their authentic attestation. Their generic nature, similarity in format, and the fact that they are so closely dated to other boilerplate affidavits of witness contained in the record, further raises doubts about the circumstances of their creation. The documents from [REDACTED] and [REDACTED], at Nos. 3 – 6 above, are not sufficiently credible to add significant weight to the applicant's assertions.

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.*

The director noted that the applicant had provided inconsistent testimony with regard to the date of his mother passing away from a car accident. Initially the applicant claimed he had returned to Gambia to visit his mother who had been in a car accident. Then, during an interview the applicant claimed that he returned to Gambia in December 1987 to visit with family members, and that his mother had passed away in 1985. The applicant also stated on his I-687, Application for Status as a Temporary Resident, that his mother died in 1987, and that he returned to Gambia in 1987 – 1988 for a family visit. On his application for LULAC membership the applicant claimed he returned to Gambia in 1987 for family business. On appeal the applicant claims he made an innocent mistake in his testimony during interview. It is not sufficient to simply change one's testimony on appeal, claiming faulty memory or scrivener's error. The AAO finds it unlikely that an individual called to his home country to attend a dying parent would simply 'forget' the reason he returned home. In this case the applicant has made numerous inconsistent statements, clouding CIS's ability to determine where the truth lies.

The applicant has also given inconsistent testimony as to the length of his departure in 1987 – 1988. The applicant is either 1) misrepresenting facts surrounding the qualifications for eligibility, or 2) unable to accurately recall the facts surrounding the qualifications for eligibility. In either case CIS cannot make an informed determination of eligibility based spotty, inaccurate, inconsistent testimony. In this case, even in a light most favorable to the applicant, it appears he was absent from the United States for a period of 46 days from December 22, 1987, to February 6, 1988. During his interview he testified that he left the United States during the first week of December, which would extend the period for which he was absent.

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1) as follows: An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded *forty five(45) days*, and the aggregate of all absences has not exceeded on hundred and eighty days (180) between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

Matter of C-, 19 I&N Dec. 808 (Comm. 1988) holds that emergent means "coming unexpectedly into being." In any event, the applicant now asserts that he returned to Gambia to visit his mother who had been injured in a car wreck. As he was returning to Gambia for the stated purpose of visiting his mother his absence was not due to an emergent reason. Therefore, the director's decision on this issue will be upheld.

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.