



U.S. Citizenship
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Services

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FILE:

MSC 02 204 65181

Office: NEW YORK

Date:

OCT 22 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.

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 that the applicant's evidence appeared to be fraudulent, and that the applicant's testimony was inconsistent.

On appeal counsel for the applicant asserts the director's decision is inconsistent.

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 July 26, 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 September 26, 2006, 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, signed by [REDACTED], asserting the applicant worked at the Octagon Shell Station in Teaneck, New Jersey from May 1981 to February 1983.
- (2) Document, signed by [REDACTED], asserting the applicant lived with him at [REDACTED], in Absecon, New Jersey, from April 1981 until present day (1990).
- (3) Letter, dated June 12, 1981, bearing a Blue Cross Blue Shield letterhead, claiming to offer the applicant health insurance.
- (4) Copy, receipt, Sonata International Travel, dated August 20, 1987, listing JFK/Damascus and Damascus/Mexico City. Airline not designated, no flight information, none of the details which normally accompany travel arrangements.
- (5) Handwritten letter, asserting the applicant was a member of the Masjid AlSalam church in Jersey City, New Jersey in 1983 and 1984.
- (6) Date stamped envelopes.
- (7) Hand written receipt from Bergen Printing, dated July 16, 1983.
- (8) Medical record from Hackensack Medical Center, dated September 27, 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). Other documents submitted by the applicant do not cover the required period or are not sufficiently particular to the applicant to warrant consideration.

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.

As noted by the director a number of the applicant's submitted documents appear fraudulent. The documents at Nos. 1, 2, and 8 above use the same or similar font, and appear to have been printed on the same printer, despite their allegedly differing origins. The letter from Blue Cross Blue Shield does not bear a name or signature, and contains misspellings which would probably have rendered it undeliverable if so addressed. The date stamped envelopes contain irregularities which raise suspicions about their authenticity, most notably the use of an Air Mail stamp for a deliver within a state. The director discussed these issues at length; however both counsel and the applicant failed to contest these inconsistencies on appeal, and the AAO agrees with the director's conclusion that the documents are fraudulent.

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 AAO would also note inconsistencies in the applicant's testimony, and the assertion of facts which are not feasible. The applicant was interviewed in 2004, and asserted that he entered the United States in April 1981, and lived in San Francisco for a few months before making his way to New Jersey. Yet on his I-687, Application for Status as a Temporary Resident the applicant lists an address in Absecon, New Jersey, for 9 years. Further, the location of the applicant's employment for the period 1981 to 1983 is Teaneck, New Jersey, over a hundred miles away, and it is not feasible that the applicant could travel the distance from a residence near Atlantic City, New Jersey to a location north of New York City. The same applies for the church the applicant supposedly attended in 1983 and 1984.

On appeal counsel for the applicant makes a series of questionable assertions, none of which are supported by any evidence nor do they address the director's finding of fraud as detailed above. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner'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).

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.