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U.S. Citizenship
and Immigration
Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: JAN 18 2007

MSC 02 085 64695

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, 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.

On appeal, counsel for the applicant asserts that the director's decision was incorrect as a matter of law and that the applicant's nervousness during his interview accounts for inconsistencies in his verbal testimony.

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.

The applicant is a class member in a legalization class-action lawsuit and as such, was permitted to and did previously file a Form I-687, Application for Temporary Resident Status pursuant to Section 245A of the Immigration and Nationality Act (Act). On December 24, 2001, the applicant filed this Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act. In support of his assertions the applicant submitted letters, pay stubs and tax documentation.

On February 20, 2004, the director sent the applicant a Notice of Intent to Deny (NOID) listing inconsistencies in the applicant's supporting documentation and verbal testimony. The director also explained that the letters submitted by the applicant were not sufficient to overcome the inconsistencies in his verbal testimony.

In a response dated March 15, 2004, counsel for the applicant asserted that the applicant was nervous and confused at his interview accounting for testimony inconsistent with his Form I-687, and submitted corrected copies of the affidavits discussed by the director in the NOID, but did not submit any additional probative evidence.

On June 8, 2004, the director denied the application because the applicant had failed to establish his continuous unlawful presence during the required period. The director based his conclusion on the inconsistent testimony of the applicant and the failure of the applicant to adequately reconcile the facts surrounding his assertions of when and how both he and his wife had traveled back and forth to Pakistan and the birth of his children in Pakistan.

On appeal counsel asserts that the director's decision was incorrect as a matter of law and that the applicant's inconsistent testimony was due to his nervousness and lack of education during the interview.

On appeal counsel mischaracterizes the director's decision as being based solely on the applicant's submission of affidavits and was thus incorrect as a matter of law. The director clearly stated that in addition to the general nature of the affidavits, the applicant's testimony during his interview contradicted representations on his I-687 and that the applicant had changed his story several times during the interview. Thus the decision was not based solely on the applicant's submission of affidavits alone, and the director was correct to point out the letters were not sufficient to rehabilitate the applicant's inconsistent testimony. It is the applicant's burden to establish eligibility, and in this case he has provided inconsistent testimony, and 3 or 4 generic letters to carry his burden.

As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation. The extremely minimal evidence furnished by the applicant 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).

In *Matter of E-- M--*, *supra*, the applicant had established eligibility by submitting (1) the original copy of his Arrival-Departure Record (Form I-94), dated August 27, 1981; (2) his passport; (3) affidavits from third party individuals; and (4) an affidavit explaining why additional original documentation is unavailable. Unlike the alien in Matter of E-M-, the present applicant does not offer any explanation as to *why* he has been unable to provide additional evidence to support his claim other than to state generally that "its been 20 years." This reduces the plausibility of the applicant's representation of facts that he has been residing in the United States and self-employed for nearly 20 years. In addition, at the time he initially submitted his Form I-687 in 1991, the events were relatively recent and the applicant would have had notice that supporting documentation would be necessary to establish eligibility for LIFE Act legalization. As an example, the applicant did submit copies of his passport at the time his Form I-687 was filed, and he would subsequently claim that he lost his passport on a bus to New York after the filing of his Form I-687, thus it is the applicant's responsibility to produce evidence and he has not done so. The evasive and inconsistent answers surrounding his testimony and documentation raise a number of other questions which the applicant failed to explain, such as how he re-entered the United States via plane in New York after losing his passport 3 weeks earlier. In the totality of its circumstances the applicant's characterization of the facts are simply not plausible. The applicant has not submitted rental receipts, medical records, utility bills or even travel documents for any of his or his wife's alleged multiple trips back and forth to Pakistan, or for any of his claimed periods of residence in the United States.

- The applicant has submitted an affidavit dated November 25, 2001, signed by [redacted] which contains a fill in the blank paragraph asserting the affiant has known that the applicant resided at '[redacted] Houston, Texas" from "1981 to 1990."

- The applicant has submitted an undated letter signed by [redacted] which contains a fill in the blank statement "I have known '[applicant]' personally from '1987' to '1988.'"

- The applicant has submitted an undated affidavit with a fill in the blank statement: "I, [redacted]. hereby certify that I have known '[applicant]' personally from '1987' to '1989.'"

- The applicant has submitted an affidavit dated April 11, 1991, signed by [redacted] containing a fill in the blank statement: "I have known '[applicant]' to have arrived in the United States on '1979' and 'he/she' has continuously lived in the United States."

The affidavits and letters submitted by the applicant fail to provide any relevant, verifiable information about the applicant's address during the required period, they fail to state the manner of the applicant's acquaintance with the affiant, or the nature of the relations between the affiant and

the applicant, or to give any other specific details which might shed light on the facts. In addition, the letters appear to be uniform in nature, having been prepared for the affiants, and are thus not as probative as unique, specifically detailed statements. General statements such as "the applicant was in the United States during this time" are not sufficiently probative to add any weight to the applicant's assertions, especially in light of the lack of any contemporaneous or corroborating documentation from the period in question. In this case the applicant has not submitted any documentation contemporaneous with the required period, and the secondary evidence is not sufficiently probative of the applicant's residence. There are no utility bills, medical records, tax records or other primary evidence that might corroborate the applicant's assertions or even the assertions of other affiants. Rejecting evidence based on its suspicious or general nature is within the director's discretion, and the AAO agrees with the director that these letters do not shed any significant light on the facts surrounding the applicant's presence during the required period.

The applicant has also submitted a number of pay stubs. However, the paystubs cover periods not relevant to this analysis or list employers with which the applicant has not claimed any association with, either on his Form I-687 or in subsequent filings.

The applicant testified inconsistently about the dates of his wife's visitations and has not provided any supporting documentation. The applicant also provided inconsistent information about when he moved to New York, and the director noted that the applicant had the opportunity to clarify his representations at the interview but instead changed his assertions several times. One such example includes the manner of applicant's departures to Pakistan. On his class membership application dated April 9, 1991, within four or five years of the events occurring, the applicant represented that he departed the United States in 1981 and 1984 from Texas, and then returned via New York. The applicant now asserts that he traveled back to Pakistan by first taking a bus to New York, and departing from JFK. The applicant has not provided any documentation to support which version of the facts may be true. Thus, the applicant's inconsistent representations in his membership application, Form I-687, and in verbal testimony raise serious doubts about the credibility of his 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 evidence submitted by the applicant does not overcome the inconsistencies of his verbal testimony. The applicant's characterizations of the facts are not plausible, and not supported in any manner by documentary evidence. It is also not sufficient for counsel to merely claim the applicant was nervous during his interview. In any event, 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 applicant has not submitted sufficient credible documentation to establish he was present during the required time. The discrepancies and errors catalogued lead the AAO to conclude that the evidence of the beneficiary's eligibility is not credible. Accordingly, the petitioner has not established the beneficiary's eligibility for the requested immigrant visa classification and the appeal is dismissed.

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