U.S. Department of Homeland Security
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Washington, DC 20529-2090
MAIL STOP 2090

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: DEC 0 2 2008

MSC 02 173 61117

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.

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 the record contained fraudulent documentation, and other inconsistencies in the record.

On appeal counsel for the applicant asserts the submitted evidence meets the applicant's burden.

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 May 12, 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 director noted that the evidence in the record was fraudulent.

The applicant submitted a written response contesting the Director's conclusion.

On July 17, 2007, the director denied the application because the applicant had failed to establish his continuous unlawful presence during the required period.

On appeal counsel for the applicant asserts the applicant has met his burden.

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

(1) Statement, by Mighty Good Gas Company, asserting the applicant worked as a gas attendant from May 1985, to June 1989.
(2) Statement, dated April 29, 1985, by Express Construction Co., asserting the applicant worked for the company from July 1982 to April 1985.
(3) Statement, dated December 20, 1981, by '[redacted] asserting he advised the applicant of bedrest due to medical conditions.
(4) Statement, by the Sikh Center of New York, Inc., asserting the applicant attended the church from May 1985 to May 1989.
(5) Statement by [redacted] asserting that she knows the applicant.
(6) Statement by [redacted] asserting that he has known the applicant since October of 1987.
(7) Statement by [redacted] asserting the applicant has been living in the United States since 1981, and left the country briefly in 1987.
(8) Affidavit, signed by [redacted], asserting he has known the applicant since October of 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).

Contrary to counsel's assertion *Matter of E—M—* does not stand for the proposition that affidavits alone are always sufficient to demonstrate eligibility. In that case the applicant submitted an I-94 entry card and an affidavit explaining why he was unable to submit any

primary evidence. *Matter of E—M—* provides guidance on the burden of proof, discussed above, and does not hold that affidavits alone are always sufficient to establish eligibility. *Id.*

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 according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (I) and (K).

In this case the director noted the record contained fraudulent documentation. On November 26, 1996, the applicant received a Notice of Intent to Revoke detailing that he was identified as part of Operation Catchhold, a bribery scheme of the Salinas Chief Legalization Office. An examination of the evidence reveals irregularities, particularly the use of a similar four inch by four inch rubber stamp on nearly all of the business letters, and the use of common phrases and formatting from various parties. The similarity of these documents gives the appearance of manufacture. Given the applicant's identification by Operation Catchhold, and the noted irregularities of the documentation, the AAO agrees with the director that the evidence of record is not credible. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001). Further, 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).

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 letter at No. 2 is dated as of April 29, 1985, but has no affidavit certification and cannot be determined to be contemporaneous with the listed date. The record indicates that no note of this company could be found in the public records. It does not meet the criteria for an employer letter. 8 C.F.R. § 245a.2(d)(3)(i). The letter at No. 3 above also contains a formatting irregularity, as the letter head is not aligned with the text of the letter, giving the appearance that the text of the letter was copied over the letterhead. This letter is also not certified, thus the date is not verifiable and the AAO doubts that the letter is credible. The letter at No. 4 above does not give the source of its information, and contains the same language used in the other documents ("It is certified/This is to certify,") including the aforementioned 4x4 rubber stamp.

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.

The AAO would note that the applicant has listed only one absence form the United States, but stated on his LIFE application that he had two children born in India in 1982 and 1985. In addition, a copy of the passport submitted by the applicant reveals that the applicant's prior passport No. [redacted] was issued in Jalabad, India, on November 22, 1982, and that an entry officer noted the name on page 1 had been changed.

The affidavits submitted by the applicant are not sufficient to clarify these contradictions, and it is not likely that the applicant was continuously unlawfully present in the United States during the required period.

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.