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U.S. Citizenship
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Services

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FILE:

MSC 03 251 62319

Office: NEW YORK

Date: DEC 16 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 "J. Grissom".

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 she 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 USCIS reconsider her 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.

United States 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 June 25, 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 did not respond.

On August 11, 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 USCIS reconsider his application.

The applicant has submitted some evidence which covers a period outside the required period, and is not relevant to these proceedings.

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

- (1) Statement by [REDACTED] asserting the applicant has been a patient of his since 1983.
- (2) Statement from [REDACTED] asserting she has known the applicant since 1982, and knows her through her mother.
- (3) Statement of [REDACTED] asserting she met the applicant at a birthday party in May 1983, and that they are still friends.
- (4) Statement by [REDACTED] asserting she has known the applicant since March 1982 when they met at a "social event," yet lists the applicant's addresses from October of 1981.
- (5) Statement by [REDACTED] asserting she has known the applicant since 1985, yet lists the applicant's addresses from October of 1981.
- (6) Statement from [REDACTED] asserting that the applicant resided with her from 1981 to the present (August 29, 1989) in Queens, New York.

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 USCIS 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 provided are generic in nature and fail

to fully explain the nature and frequency of the relationships. Many of the affidavits assert that the applicant arrived on either October 2, 1981, or October 10, 1981, in pro forma text, and then specifically state that they did not meet the applicant until sometime later, raising doubts about the accuracy of the statements. 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). If affiants do not have direct actual knowledge of the fact to which they are testifying their testimony on that issue is not credible. In this case the documents are not clear in their attestations, as noted above, and there is no evidence in the record to corroborate their assertions or clarify the inconsistencies with their assertions.

In addition, the applicant was interviewed by USCIS on May 24, 2004. During that interview she asserted that she entered through JFK using the passport of another person, and that she had received her GED sometime in 1989 or 1990. This is inconsistent with a statement she made on her Form I-687 that she had entered without inspection through Buffalo, New York. The lack of evidence in the record undermines the applicant's other assertions, such as having received a GED and any employment during the required period.

The general lack of detail concerning the applicant's whereabouts and activities during the required period reflects poorly on her assertions of continuous unlawful residence and presence. The applicant has made alleged a minimal body of facts in an attempt to satisfy the criteria for legalization, leaving USCIS with no context in which to verify or corroborate her assertions. Without the context in which to view the applicants 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. When the facts asserted in the record are viewed in their totality with the evidence presented they are not sufficiently supported to reconcile noted inconsistencies and establish eligibility.

Given the lack of accurate and probative supporting documentation and the inconsistencies noted in the record, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act.

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