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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: MIAMI Date: NOV 0 4 2008

MSC 02 161 61740

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 Director, Miami, 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, and specifically noted contradictory information contained in CIS records and the applicant's inconsistent testimony.

On appeal counsel for the applicant asserts that the director's decision was in error.

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 January 11, 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 March 6, 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 director was biased, that CIS did not keep records in the 1980s, and that the affidavit submitted is sufficient to establish eligibility.

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

(1) A statement submitted by [redacted] asserting she has known the applicant since 1981, that she arrived at JFK by air, and that they kept in touch by telephone.
(2) Pictures which the applicant asserts are from 1982 and 1983.

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).

CIS records indicate that the applicant entered the United States for brief periods in 1986, 1987 and 1990. In addition, the applicant submitted an I-687 application listing multiple dates of travel on a B-2 visitor's visa, indicating that she was not residing in the United States unlawfully, but was instead periodically visiting the United States as a visitor. Further, the dates she listed contradict her assertions elsewhere in these proceedings such as during her interview and on her LIFE Act application.

The applicant has not submitted any primary evidence, and relies entirely on a single, generic affidavit to establish eligibility for the required period. In light of the glaring contradictions in the record, and the applicant's own inconsistent testimony, this evidence is not sufficient. 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 director detailed specific information which contradicted the applicant's assertions of eligibility. Counsel has chosen not to provide objective evidence in an attempt to clarify the contradictions or satisfy the applicant's burden, and instead rambles off a series of baseless and unprofessional accusations against CIS. CIS finds it inappropriate that counsel would serve his own biased agenda against CIS rather than attempt to meet the applicant's burden of proof with objective, corroborating evidence. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Further, the unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

The applicant must submit *evidence* of the applicant's eligibility. Submitting a third party statement in lieu of evidence requires that such statement consist of more than narrating a casual relationship. Without sufficient detail to provide context to a statement such that it is clear the affiant has actual direct knowledge of that which they are testifying about, it is merely an unsupported statement and does not constitute evidence. In light of the evidence contradicting the applicant's assertions, and the failure of counsel or the applicant to provide objective evidence clarifying these contradictions, the third party statement submitted above are not sufficiently probative to establish eligibility.

The discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the applicant's eligibility is not credible. In addition, it appears the applicant is not prima facie eligible for LIFE act application, as there is no evidence in the record that the applicant actually filed a written claim for class membership in one of the legalization lawsuits, nor is there evidence in the record that the applicant actually departed the United States in 1987 and was front desked in his attempt to file a legalization application. 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.