



U.S. Citizenship  
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FILE:

MSC 03 245 61762

Office: NEW YORK Date:

NOV 04 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 several inconsistencies in the applicant's testimony and application.

On appeal counsel for the applicant asserts that new affidavits demonstrate the applicant's eligibility.

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 April 23, 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 submitted a written response and asserted the evidence was sufficient to establish eligibility.

On June 2, 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 CIS reconsider his application.

Some evidence contained in the record post-dates the required period and is not relevant to these proceedings. Relevant to the period in question the record contains the following evidence:

- (1) Document, bearing the name \_\_\_\_\_ asserting the applicant lived at \_\_\_\_\_ Connecticut, from December 1981 to November 1994. The dates on this document have clearly been altered.
- (2) Document, bearing a letterhead of \_\_\_\_\_ Connecticut, and listing dates from January 20, 1982, through June 2, 1988. The document has a poorly inserted copy of the applicant's name, which is crooked in relation to the surrounding text in the document.
- (3) Document, appearing to be an account due statement from the Mount Vernon Health Center in New York, asserting that the applicant visited the office on June 25, year unreadable. The date of the year has clearly been altered in this document.
- (4) Document, appearing to be an account due statement from the Mount Vernon Health Center in New York, asserting that the applicant visited the office in 1983.
- (5) Document, bearing the name \_\_\_\_\_ asserting that he has known the applicant since 1981.
- (6) Document, bearing a name of \_\_\_\_\_ asserting the applicant lived with her in Mount Vernon from 1981 through 1986.
- (7) Letter, signed by \_\_\_\_\_ Owner, Sweetwater's restaurant, asserting the applicant worked for the restaurant from December 1981 to December 1985.
- (8) Document, signed by \_\_\_\_\_ asserting he has known the applicant since February 1982.
- (9) Document, signed by \_\_\_\_\_ asserting she has known the applicant since 1982.
- (10) Document signed by \_\_\_\_\_ asserting the applicant worked at his restaurant in Mount Vernon, New York, from November 1984 to January 1985.

- (11) Document, bearing a name [REDACTED] in a plainly formatted letter form, asserting the applicant worked for Sweetwater restaurant in 1984 and 1985.

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).

The applicant has submitted documentation which is clearly fraudulent. CIS contacted the affiants [REDACTED] for the letter from No. 7 above, Sweetwater's Restaurant, and were told the applicant never worked there, that the signature on the document was a forgery, and that no person had drafted any such letter. Sadly, the applicant submitted the document at No. 11 above, after having been exposed. This document, a plainly formatted letter asserts that the writer is [REDACTED] (who was contacted by the service) and referred to as the *former owner* and signed in a completely different handwriting than the original letter. As noted, [REDACTED] the current owner of Sweetwater was contacted, shown the letter and he declared it a forgery.

Other documentation has clearly been altered, with dates and names covered over by white out, or inserted after the document has been fabricated. The applicant has clearly misrepresented facts to CIS, including her addresses, locations and dates of residences. In her I-687, Application for Adjustment of Status to Temporary Resident, the applicant asserted she lived in New York until 1990, and submitted documents which had been fabricated to support that assertion. Elsewhere in the record she asserts to have lived in Darien, Connecticut from the date of 1985, and has submitted fabricated documentation to support that assertion. Specifically, the document at No. 2 above is clearly fraudulent, with the applicant's name superimposed over a pre-existing document. The name is not even lined up with the address, and it should be noted that the address listed would be inconsistent with the applicant's assertions of having lived in New York until 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.*

On appeal counsel fails to address the glaring inconsistencies and fraudulent documents, and instead insists that new third party affidavits demonstrate the applicant's eligibility.

Documents which generically assert an affiant has known an applicant since a particular year are not sufficiently probative to support assertions of eligibility. The documents and affidavits submitted are internally inconsistent, generic in nature, and lack credibility. As noted by the director, the alleged authors of some of these documents were contacted in indicated they were fake, the fact that the applicant is still trying to defend this evidence and his own credibility is

astounding. He has materially misrepresented facts surrounding his eligibility in these proceedings.

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.