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U.S. Citizenship
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Services

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FILE:

MSC 02 190 64243

Office: NEWARK

Date:

OCT 22 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, Newark, 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 an inconsistency in the applicant's testimony and application.

On appeal the applicant asks that CIS reconsider his 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.

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 August 30, 2006, 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 April 6, 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.

The bulk of the evidence submitted by the applicant covers a period outside of the required period and is not relevant.

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

- (1) Document, dated November 21, 2002, signed by [REDACTED], asserting that he has been in the United States since 1985, and that he gave the applicant a farewell before he left for the United States in 1981.
- (2) Document, dated November 26, 2002, asserting that he has been in the United States since 1984, that the applicant has been in the United States since 1981 because he knew the applicant in India, and that he met the applicant in 1990.
- (3) Document, signed by [REDACTED] asserting he has been in the United States since 1984, that he knows the applicant came to the United States in 1981 because he was a customer of the applicant's father's clothing store in India, and that he personally met the applicant in 1984.
- (4) Document, signed by [REDACTED], asserting that he has been in the United States since 1985, he met the applicant in India in 1978, that he bid the applicant farewell to the United States in 1981, and that he met him in California in 1985.
- (5) Document labeled as an account book, bearing date stamps throughout the required periods deposits and withdrawals listed from an account.

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 not submitted any primary evidence, and relies entirely on affidavits to establish eligibility for the required period. However, documents which generically assert an

affiant has known an applicant since a particular year are not sufficiently probative to support assertions of eligibility. Casual acquaintance with an applicant such as meeting someone at a party, seeing them in church, or seeing them on the street corner, is not sufficient to demonstrate that such affiant has actual direct knowledge of the facts to which they are testifying (arrival before a certain date, continuous residence, etc.). 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. In this case each of the affiants state they have been in the United States since after 1984 or 1985, and thus did not have actual, direct knowledge of the applicant's continuous unlawful residence in the United States.

The applicant relies on a document which he refers to as an account book, but the document is not sufficiently detailed to establish its own authenticity. It bears only generic date stamps, indiscernible initials of various persons, and numbers. If this account represents a bank account activity then the applicant could have contacted Bank of America and provided some primary evidence that his account existed from a certain date, yet none was provided. The AAO cannot rely on this document to provide any significant weight to the applicant's assertions.

As noted there are numerous inconsistencies in the applicant's testimony and evidence. As an example the applicant listed two children born in India during the required period, and yet initially listed on his I-687 one date in which he traveled back to India – not necessarily coinciding with the birth of his child. In addition, the applicant completed a class action lawsuit questionnaire in which he stated his date of entry into the United States was January 1982. Also notable is the general lack of information provided by the applicant about his whereabouts and activities during the required period, such that CIS can put his assertions into context, corroborate his testimony, and make an informed determination of his continuous unlawful residence and presence in the United States. The applicant has not explained how he entered the United States initially, how he traveled in and out of the country for his trips back to India, nor explained how the applicant sustained himself or his family while living here, how and why or where they moved back and forth from California to New York, or any other details which might indicate to CIS that the applicant is telling the truth. When viewed in its totality the record of proceeding lacks sufficient information to carry the applicant's burden of proof.

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.