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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

MSC 02 009 63446

Office: NEW YORK Date:

FEB 03 2009

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 "John F. 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 he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. The director noted inconsistencies in the applicant's testimony and applications as well as evidence that was fraudulent.

On appeal the applicant disavows any knowledge of contradictions in his testimony or of the fraudulent evidence that he submitted on a prior occasion.

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 (USCIS) 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 September 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 applicant did not respond.

On October 15, 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 disavows any knowledge of the inconsistencies and fraudulent evidence contained in the record.

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

- (1) Statement from [REDACTED] asserting the applicant lived with him at two different addresses from 1981 to 1990.
- (2) Statement from [REDACTED] asserting the applicant was employed by his company [REDACTED] Construction Company. The letterhead is not centered on this form, which appears to be an invoice quote, and not an employment letter. As noted by the director the phone number listed was not associated with this company or person.
- (3) Statement from [REDACTED] asserting that he met the applicant in 1985. The affiant later asserts that he saw the applicant every two to three months from 1981 to 1990, contradicting his prior statement.
- (4) Statement from [REDACTED] asserting he saw the applicant once or twice a month from 1981 to 1990.
- (5) Statement from [REDACTED] asserting he has seen the applicant once or twice a month from 1981 to 1990.

As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation. The minimal evidence furnished in this case 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). When viewed in its totality, the lack of information and detail provided by the applicant, in addition to the minimal evidence furnished undermines his assertions of eligibility.

The applicant has made numerous contradictory representations to USCIS, and stated during his interview that he had submitted a fraudulent I-94 card. The applicant originally asserted that he had entered the United States without inspection and had never had a visa of any type to enter the U.S. He asserted that he departed the United States only once during the entire required period,

from December 10, 1983 to January 10, 1984. On his Form I-687 completed in 1990 the applicant asserted that he traveled to Bangladesh in December 1983 and January 1984, and that he had a son born in Bangladesh on October 15, 1984. While answering a legalization questionnaire the applicant claimed he had no documentation of his entry into the United States, such as I-94 card, passport stamps, or other travel documentation. Sometime later the applicant submitted a copy of an I-94 card showing a B-2 entry into New York in 1984. During his April 1, 2002, interview the applicant stated that admitted that he had copied an I-94 from an advance parole application and that it had been forged by an individual he refused to name.

Then, in a Form I-687 completed in 1991 the applicant began claiming he had traveled outside the United States only once in June 1987 and July 1987, and that his son was born on May 9, 1988. Thus the applicant has changed his testimony with regard to having and entering the United States under a B-2 visa, and when he traveled outside the United States and when his son was actually born. Clearly the applicant's assertions contradict each other, and the applicant has admitted – and the record indicates – that he submitted fraudulent evidence.

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.*

In light of this the applicant has not submitted any primary evidence, and relies entirely on affidavits to establish eligibility. However, 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 how the affiants came to know the applicant and what the nature of the relationships were. The documents and affidavits submitted are internally inconsistent, generic in nature, and lack credibility.

The discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the applicant's eligibility is not credible. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the lack of credible 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.