

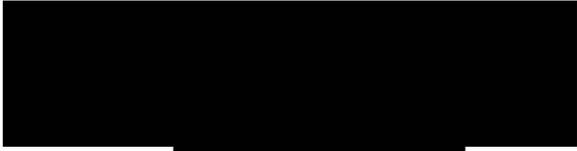
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 03 105 61183

Office: TAMPA

Date:

FEB 03 2009

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:

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, Tampa, 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 evidence which contradicted the applicant's testimony.

On appeal the applicant asserts she was not given a chance to respond and that the director did not apply the correct burden of proof.

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 16, 2003, 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 additional evidence.

On April 28, 2007, the director denied the application because the applicant had failed to establish her continuous unlawful presence during the required period.

On appeal the applicant asserts the director did not apply the correct burden of proof and was not given a chance to respond.

The record contains a copy of the NOID sent to the applicant, as well as a copy of the applicant's response. Thus, the applicant's assertion on appeal is not supported by the record.

The applicant failed to specifically articulate how the director failed to apply the correct burden of proof. In rendering her decision the director specifically noted inconsistencies in the affidavits submitted by the applicant, and cited evidence which contradicted the applicant's assertion of entering the United States prior to January 1, 1982, and residing unlawfully thereafter for the duration of the required period. The applicant failed to address the director's conclusions, and a general statement asserting the director was erroneous in his application of the burden of proof is insufficient to address or overcome the inconsistencies and contradictions noted by the director.

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

- (1) Statement by [REDACTED] asserting that the applicant resided in "Chicagoland" from 1981 to 1983, and that the applicant attended religious ceremonies of her organization. It is noted that other affiants and the applicant herself assert she resided in Chicago until 1984, thus raising doubts about the accuracy of this affiant's recollections.
- (2) Statement by [REDACTED] asserting the applicant has lived in the United States since September 1981, and that his knowledge is based on telephone conversations he had with the applicant's husband while he, the affiant, lived in India. The record contains another statement from this individual asserting that the husband lived with him at the address where the applicant's husband also claimed he worked, thus contradicting the affiant's own assertion that he was living in India at the time. This affiant lacks credibility and his statement will not be accorded any weight in these proceedings.
- (3) Statement by [REDACTED] asserting the applicant arrived in the United States at Chicago around September 1981, at that she saw the applicant periodically at religious events.

- (4) Statement by [REDACTED] asserting that she met the applicant at a religious event in Tampa in 1984.
- (5) Statement by [REDACTED] asserting the applicant has lived in Tampa since 1984, and references another affiant by the name of [REDACTED] as the applicant's residence. The record contains a letter from [REDACTED] asserting the applicant's husband worked for him in his residence in Tampa in 1984, but fails to mention or corroborate that the applicant's husband or his family was residing with him. The accuracy of [REDACTED]'s statement is in doubt, and is not sufficiently probative to lend any weight to the applicant's assertions.
- (6) Statement by [REDACTED] asserting the applicant worked at the [REDACTED] from September 1984 to December 1986.
- (7) Cook County document bearing the applicant's name and dated January 12, 1984. The nature and context of this document is unclear, and it provides little weight to the applicant's assertions.

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).

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 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 inconsistent, lack credibility, and fail to provide sufficient details such that the applicant's assertions can be corroborated.

As noted by the director the record contains a copy of the applicant's husband's passport, and USCIS records indicate the applicant's husband, with whom the applicant claims to have entered the United States, was not allowed to enter the United States and returned to England. The applicant's husband also informed USCIS that his wife – the applicant – was residing in London. The applicant herself asserted during interview that she returned to India to bring her son to London in 1991, and then later asserted that she brought her son, who would have been two months old at the time, to the United States with her in September 1981. The applicant failed to address these contradictions, leaving the AAO to conclude that the applicant's assertions of eligibility are not credible.

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.*

The record indicates that the applicant has been convicted of two misdemeanor crimes in the United States. The applicant submitted copies of the final dispositions for these cases and they

do not appear to independently preclude her from eligibility under the LIFE Act provisions. The applicant remains ineligible on other grounds, however.

The discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the applicant's eligibility is not credible. The minimal evidence furnished by the applicant is not sufficient to establish eligibility, and in light of the contradictions noted in the record fail to overcome the conclusions of the director.

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.