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U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 02 031 62082

Office: NEW YORK Date: DEC 02 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:

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 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 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 May 24, 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 additional evidence.

On July 11, 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.

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

- (1) Statement from [REDACTED] stating that he has known the applicant to live at his [REDACTED] address in Astoria, New York since September of 1981.
- (2) Statement by [REDACTED] that he has known the applicant since September of 1981, having met him on a subway platform, and that they visited each other's residence several times between 1981 and 1989.
- (3) A copy of a birth certificate for his daughter, listing a birthdate of December 27, 1987.
- (4) Statement from [REDACTED] asserting he has known the applicant in the United States since August of 1981.
- (5) Document asserting that Dhaka International Airport has a record of the applicant's departure from Bangladesh on August 1, 1981, but does not list a destination.
- (6) Statement from [REDACTED] asserting the applicant traveled through Montreal in 1987.

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. 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. In this case the documents provide list inconsistent areas of residence for the applicant, are generic in nature and fail to fully explain how the affiants came to know the applicant and what the nature and frequency of the relationships were. As an example, the letter at No. 1, above, asserts the

applicant resided at his current address from September of 1981, which contradicts the addresses and periods listed by the applicant and raises doubts about the accuracy of the affiant's recollection and the credibility of the remaining letters. The documents and affidavits submitted are internally inconsistent, generic in nature, and lack credibility.

The general lack of detail concerning the applicant's whereabouts and activities during the required period reflects poorly on his assertions of continuous unlawful residence and presence. The applicant has made alleged a minimal body of facts in an attempt to satisfy the criteria for legalization, leaving CIS with no context in which to verify or corroborate his assertions. Without the context in which to view the applicants assertions they appear isolated factually, do not present an overall picture of the applicant's residence and presence, are not corroborated by other assertions contained in the record, and are not amenable to verification. When the facts asserted in the record are viewed in their totality with the evidence presented they are not sufficiently supported to establish eligibility.

As noted by the director there are other inconsistencies as well. The applicant has claimed differing birth dates for his daughter, and has submitted a document alleging to be a foreign birth certificate listing a second date. Regardless of the actual date, the fact that the applicant claimed two different dates to begin with raises doubts about the accuracy of his recollections and assertions. The applicant has listed a different series of addresses on his I-687, Application for Temporary Residence, compared with the list provided with his I-485, Application for Adjustment to Permanent Residence. Given the lack of details in the record concerning the applicant's manner of entry, residence and activities during the required period, the noted inconsistencies contradict the only evidence that has been submitted by the applicant.

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.

The AAO notes that the record contains evidence the applicant has two misdemeanor convictions on his record. These two misdemeanor convictions do not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.