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U.S. Citizenship
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Services

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FILE:

Office: PROVIDENCE

Date: DEC 16 2008

MSC 02 232 66087

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.

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 an inconsistency in the applicant's testimony and application.

On appeal the applicant asks that USCIS 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.

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.

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that "emergent" means "coming unexpectedly into being."

On December 11, 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 director also noted that statements submitted by affiants contradicted testimony by the applicant on his forms and during interview.

The applicant submitted a written response in which counsel asserts the inconsistencies noted by the director are insignificant.

On August 30, 2007, the director denied the application because the applicant had failed to establish his continuous unlawful presence during the required period.

On appeal counsel for the applicant asks that USCIS reconsider his application.

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

- (1) Letter from [REDACTED] asserting he attended the applicant's brother in Mexico for blurry vision and vomiting, resulting in hospitalization from September 5, 1987, to September 27, 1987.
- (2) Letter from [REDACTED] asserting the applicant returned to Mexico for his brother's illness, and left Mexico to return to the United States on September 29, 1987.
- (3) Statement from [REDACTED] asserting he drove the applicant to the airport on September 8, 1987, and picked him up on his return to Kennedy airport on September 27, 1987.
- (4) Letter signed by [REDACTED] asserting the applicant has been a member of the parish since 1981.
- (5) Document, recorded on a medical report form, in the nature of a statement asserting the applicant has been a patient of [REDACTED] since July 1983.

- (6) Statement from [REDACTED] asserting the applicant resided at two addresses between October 1981 to April 1988, and May 1988 to January 1989. The document makes no other statements
- (7) Statement from [REDACTED] asserting the applicant resided at one address from 1981 to 1993.
- (8) Statement from [REDACTED] asserting he met the applicant when he first came to the United States, but fails specify any date.
- (9) Statement from [REDACTED] asserting he has known the applicant to reside at one address from 1981 to 1993.
- (10) Statement from [REDACTED] asserting he has known the applicant to reside at one address from 1981 to 1983.
- (11) Varous hand-written receipts dated throughout the required period.

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).

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 of the relationships were. The documents and affidavits submitted are internally inconsistent, generic in nature, and lack credibility.

The director specifically detailed how the evidence submitted by the applicant was not credible, noting that the alien's application utilizes the exact same evidence as his father's application, thereby impeaching the credibility of the all the 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.*

The director also pointed out that certain evidence could not be verified. In particular the director noted that evidence of the existence of a subsidiary of a company where the applicant claims to have worked could not be located. The applicant asserts he was paid in cash and that the building where it was located burned down. The AAO finds this implausible, as corporations and subsidiaries do not operate in a void, and are required to register their existence with state regulatory agencies, file quarterly reports, as well as comply with a host of labor and other regulatory laws which leave a trail of documentation. The applicant's explanation that this company burned down and its existence cannot be verified is implausible. In the face of all this,

counsel asserts these inconsistencies are “minor.” Applications with evidence that cannot be verified may be denied. 8 C.F.R. § 245a.2(d).

The record contains inconsistent testimony with regard to his travel in 1987. A statement submitted by a third party asserts that he drove the applicant to and from Kennedy airport in New York, while the applicant alternately claimed returning to New York, and returning to Newark via Los Angeles. On appeal counsel for the applicant dismisses this inconsistency as “minor.” The AAO does not accept this reasoning as a legitimate response to inconsistent testimony. Further, neither the applicant nor counsel has supported their assertions with evidence, and in fact evidence in the record further controverts their statements. The letter from the applicant’s mother asserts he did not leave for the United States until September 29, 1987, which, in all likelihood would not have him back in the New York or New Jersey until one or two days later. Given the specificity of her assertions, the inconsistency is significant, particularly in light of other inconsistencies with regard to the applicant’s travel. Thus, it is clear the applicant’s assertions are not accurate, and the AAO has reason to doubt his assertions are credible. The record contains no primary evidence, with the applicant relying solely on inconsistent affidavits to establish eligibility, in light of this the AAO refuses to disregard the inconsistencies in the applicant’s testimony.

The letter from [redacted] cited by counsel, admits that he did not have personal direct knowledge of the facts to which he was testifying, but was told by a deacon that the applicant had been a member of the parish. Testimony based on other second hand testimony is not amenable to verification, and provides little weight to an applicant’s assertions. In this case the letter does not meet the criteria for church letter, and given the generic format of the document, mimicked by other documents in the record, the AAO has reason to doubt the authenticity of this document.

The letter from [redacted] does not give the frequency or dates of the applicant’s visits. Without such the documents lacks probative value other than to infer that the applicant may have visited the office once in July 1983.

Due to their susceptibility to fraud and inability to verify the authenticity of contents handwritten receipts are of no probative value, and do not add any weight to the applicant’s assertions.

The alien must submit *evidence* of his eligibility. Submitting a third party statement in lieu of evidence requires that such statement consist of more than the simple statement such as “I know the applicant has been living in the United States since 1979.” An affidavit should contain sufficient detail to indicate that the affiant has actual, direct knowledge of an applicant’s presence and residence. Testimony based on second-hand knowledge is not credible. Counsel’s conclusion that the noted inconsistencies are minor is unfounded in light of what little information and evidence have been received from the applicant. Furthermore, as discusses above, affidavits alone are not sufficient to establish entry into the United States prior to January 1, 1982, and a continuous, unlawful presence throughout the required period.

In this case USCIS verified that at least two of the applicants did not have actual direct knowledge of what they were stating, despite attestation of such knowledge in their affidavits. Neither counsel nor the alien has sufficiently addressed the fraudulent nature of the evidence contained in the record, nor did they address the evidence which could not be verified, instead referring to a letter from a priest and one other third party statement. As such the director's decision will be upheld and the appeal will be denied.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for LIFE Act legalization has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 245a of the Act. The applicant has failed to meet this burden.

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