

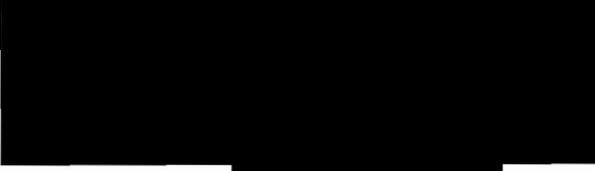
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK

Date: DEC 16 2008

MSC 02 009 63466

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.

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 not credible, that the applicant had failed to explain inconsistencies in his testimony, and had failed to sufficiently support his assertion 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 provided a written response.

On August 29, 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 asserts that the applicant never made any inconsistent statements, that the service has mixed up the applicant's file, and that USCIS has violated the applicant's constitutional rights by determining that his application lacked credibility.

The applicant has submitted some evidence which covers a period outside of the required period, and is not relevant to these proceedings.

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

- (1) Statement by [REDACTED] asserting he has known the applicant since 1981, and that the applicant use to perform casual labor at his prior business.
- (2) Statement by [REDACTED] asserting he has known the applicant to live in the United States since February 1981.
- (3) Statement by [REDACTED] asserting he has known the applicant since November 1981 when he randomly met the applicant after looking for someone else.
- (4) Statement by [REDACTED] asserting that he has known the applicant to reside in the U.S. since October 1983.
- (5) Statement from [REDACTED] asserting he has known the applicant since 1985, attesting to the applicant's addresses.
- (6) Statement from [REDACTED] asserting he has known the applicant since July 1986.
- (7) Statement from [REDACTED] asserting he has known the applicant since October 1981.
- (8) Statement by [REDACTED] asserting the applicant traveled out of the United States on November 10, 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).

Documents which generically assert an affiant has known an applicant since a particular year after having met somewhere on the street or at a party 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 and that the affiant has actual direct knowledge of those facts. In this case the documents are generic in nature and fail to provide details about frequency and nature of the relationships.

In his decision the director clearly cited inconsistent testimony, unverifiable affidavits, and a general lack of supporting evidence in denying the application. The record confirms that after an interview the applicant was issued an I-72 on December 29th, 2002, instructing the applicant to return within 90 days with two witnesses whom USCIS believed had not actually written two affidavits submitted by the applicant. The director specifically noted that two affidavits were fraudulent in their appearance, and the AAO would note that the identification cards submitted for these two affiants contain irregularities which undermine their veracity. The applicant later stated he could not find these individuals.

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.*

Counsel makes dramatic arguments invoking the 14th and 5th amendments to the constitution claiming his client has received discriminatory treatment, all the while relying on implausible explanations dismissing the numerous inconsistencies and changed testimony noted by the director. Counsel cites a number of cases which are not relevant to these proceedings, and to an internal USCIS Memo, none of which is to offer evidence in support of the applicant's burden.

The applicant has not submitted any primary evidence, and relies entirely on affidavits to establish eligibility and explain inconsistencies for the required period. The applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv). The applicant also has not provided documentation (including example money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, or automobile, contract, and insurance documentation) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (I) and (K). In addition the applicant has not provided any evidence corroborating his entry into the United States, such as receipts and documentation from his travel through Pakistan or Canada which he claims he entered through on two occasions. In light of this counsel insists

that USCIS disregard or disbelieve the applicant's inconsistent testimony and favorably consider documents with questionable credibility.

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.

Contrary to counsel's insistence, the AAO cannot simply disregard the applicant's inconsistent testimony. In light of the inconsistencies and the minimal evidence that has been submitted the record does not support eligibility.

The applicant himself submitted a legalization questionnaire, completed in his handwriting, asserting that he left the United States in November 10, 1987, and did not return until December 30, 1987. There is no evidence that the applicant actually returned on December 30, 1987, except for the same third party affidavits which provide inconsistent departure dates. This length of an absence would render the applicant statutorily ineligible due to an absence of greater than 45 days. The record contains affidavits which give two different dates for the applicant's departure and the discrepancy has not been addressed except by counsel insisting that USCIS consider the date which would qualify the alien as eligible. In light of this the applicant has failed to explain his admission that he was absent from the United States for a period greater than 45 days. Therefore, the applicant is also statutorily ineligible due to his absence of greater than 45 days.

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.