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U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 03 248 61297

Office: NEW YORK Date:

SEP 24 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:

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 "Robert P. Wiemann".

Robert P. Wiemann, 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 1) was absent for a period which disrupted her continuous physical presence; and 2) 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 an inconsistency in the applicant's testimony and application.

On appeal counsel for the applicant dismisses the inconsistencies noted by the director, asserted that the applicant was absent due to emergent reasons, and submitted an additional letter, web page printout and copy of the applicant's passport.

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).

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1) as follows: An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded *forty five(45) days*, and the aggregate of all absences has not exceeded on hundred and eighty days (180) between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

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 July 18, 2006, the director sent the applicant a Notice of Intent to Deny (NOID), which stated that the evidence submitted by the applicant was more than likely fraudulent and that she had failed to establish 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.

In response counsel for the applicant disavowed any responsibility for fraudulent documentation submitted on behalf of the applicant, asserted that the applicant was absent for more than 45 days due to emergent reasons, and asserted that the applicant's evidence was sufficient to establish eligibility.

On September 25, 2006, the director denied the application because the applicant had broken her chain of continuous unlawful residence and had failed to establish her continuous unlawful presence during the required period.

On appeal counsel for the applicant contests the director's conclusion.

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

- (1) Copy of a document asserting that the applicant was employed by A – Z Cleaning Services from July 1984 to December 1989.
- (2) Copy of an affidavit signed by [REDACTED] asserting the she is a good friend of the applicant and listing address for the required period.
- (3) Copy of a Parish book entry with hand written entries and bearing various dates during the required period.
- (4) Copy of a hand written receipt dated December 1986 listing the applicant as a payee.
- (5) Various envelopes bearing date stamps from 1982, 1983, 1986, 1987.
- (6) Letter signed by [REDACTED] addressed to the applicant, dated November 9, 1982, which discusses the applicant taking a position with the LaCorde Cosmetics company.

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. In this case the documents provided 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.

As noted by the director, the date stamped envelopes appear to be fraudulent, being stamped with dates prior to the date of release for the stamps used, and bearing handwritten addresses to the applicant in handwriting that appears remarkably similar to her own. In response to this conclusion counsel for the applicant simply dismisses the director's conclusion and states that the service has not provided any proof they are fake. It is the applicant's burden to establish eligibility, it is insufficient to simply disagree with the director and does not adequately address the director's conclusions. If CIS fails to believe that a fact stated in the application is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Other documents are clearly fraudulent and are fatal to the applicant's credibility. The letter at No. 6 above bears a date several years prior to the area code usage listed in the letterhead, and was obviously backdated with the intent to make the document appear contemporaneous. Counsel's response borders on frivolous, asserting – despite the fact that representatives and applicants certify as true and authentic all submitted evidence – that the applicant is not responsible for evidence provided by third parties. It is clear that counsel's response lacks candor as the 'evidence' submitted should not have been fabricated with the intent to submit as evidence, and thereby acknowledges that the document was not received contemporaneously for the reason asserted therein (a welcome letter to the company).

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 discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the applicant's eligibility is not credible. Accordingly, the applicant has not established the eligibility and the appeal will be dismissed.

The applicant admitted that she had been absent from this country for a period over 100 days from at least November 15, 1986, to February 27, 1987, and therefore exceeded the forty-five day limit for a single absence from the United States during this period. Consequently, the applicant cannot be considered to have continuously resided in the United States for the requisite period pursuant to 8 C.F.R. § 245a.11(b), because her absences of approximately 100 days exceeds the forty five day limit for a single absence.

In response to the notice of intent to deny and on appeal, counsel acknowledges the applicant's absence but asserts that his return to the United States had been delayed by emergent reasons. *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988) holds that emergent means "coming unexpectedly into being." Visiting a daughter and sick mother the applicant has in Poland is not an emergent reason which justifies the extended absence, and in any event was the reason the applicant returned to Poland in the first place.

Consequently, the applicant cannot be considered to have continuously resided in the United States for the requisite period pursuant to 8 C.F.R. § 245a.11(b), because her absence of approximately 100 days exceeds the forty five day limit for a single absence.

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.