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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 275 60263

Office: NEW YORK Date: FEB 03 2009

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 "J. 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, 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.

On appeal the applicant asserts that he has submitted credible evidence.

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).

"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 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 23, 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 did not respond.

On July 17, 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 USCIS reconsider his application.

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

- (1) Statement from [REDACTED] asserting the applicant has been a patient of his practice since September, 1981, and submitting a one page, hand-written record of the applicant's visits spanning the entire length of the required period. The document is not corroborated with invoices, receipts, practice licenses, or even an official letterhead.
- (2) Statement from [REDACTED] (Agent of [REDACTED]) asserting the applicant arrived on the Santa Lucia on July 30, 1987, and returned the same on August 20, 1987. The applicant claims to have been a stow-away, it is unclear how any official would have notice of his travel. Further, this document states a different date than that asserted by the applicant, raising doubts about the veracity of both assertions.
- (3) Document from "National General Hospital" asserting the applicant's mother was under observation. The statement contains a dated notary statement but no signature by either the affiant or notary.
- (4) Document from the "Health Minister" asserting the applicant's mother was a patient at the hospital. The statement contains a dated notary statement but no signature by either the affiant or notary.
- (5) Statement from [REDACTED] "Surgeon-Doctor" asserting the applicant's mother was a patient in her studio. The statement contains a dated notary statement but no signature by either the affiant or notary.

- (6) Statement by [REDACTED] of Tribunal Agrario, asserting the applicant was in Lima, Peru, in August of 1987. The statement contains a dated notary statement but no signature by either the affiant or notary.
- (7) Statement by [REDACTED] listing the applicant's address in 1988.
- (8) Statement by [REDACTED] listing the applicant's address in 1981 and 1982.
- (9) Statement by [REDACTED] listing the applicant's addresses from 1983 to 1988.

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 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 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 one document which contains assertions the applicant was present throughout required period is hand-written, and the "doctor" with which the file has been associated cannot be contacted. The applicant conveniently claims that "the doctor might be out of business." It is the applicant's burden to establish eligibility in these proceedings, submitting alleged medical records that cannot be verified is not sufficient to carry an applicant's burden.

It is clear from an examination of the record that the applicant has submitted a body of fraudulent evidence, in some cases being very poorly fabricated. The three generic affidavits listed at Nos. 7, 8, 9, above were obviously completed by the same person (even a cursory examination of the handwriting, phrasing, and attestations exposes a common preparer). Other documents, such as the "Doctor's note" at No. 3 above contains a dated notary statement but no signature by either the affiant or notary, thus indicating the document was not authentic because it was not witnessed by notarized third party as was intended by the notary statement. Each of the documents from titled foreign affiants ("surgeon doctor," "health minister," "tribunal president") purport to be from different affiants in Peru but the documents are all formatted in the same manner and contain a signature notary block for New Jersey. Copies of these documents were submitted previously with signatures and notary stamps, so it is clear that the applicant has two versions of the documents and they are thus not authentic. On his Form I-485 the applicant lists his son's birth date as February 25, 1986, and yet he claims to have left the United States only once in 1987 (when confronted with this inconsistency during an interview the applicant changed his story and asserted that his wife came to the United States in 1985).

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 applicant's use of aliases complicates USCIS' ability to ascertain the truth. In his application for temporary evidence the applicant submitted a different set of documents including ADP pay stubs for various companies, signed versions of the documents submitted with his LIFE act legalization, and a church letter which lists his 1981 address as of 1990 (the applicant stated during interview that he moved frequently, and listed his 1981 address through December 1982 only). These documents are not clearly authentic, the applicant did not submit these documents in his LIFE Act application or mention the places of employment referenced in those documents.

In light of the fraudulent evidence submitted, and the minimal information furnished by the applicant surrounding his life and activities in the United States, the applicant's testimony and evidence 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.

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