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U.S. Citizenship
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Services

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FILE:

MSC 02 127 63383

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:

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.


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.¹

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.

¹ 8 C.F.R. § 103.2(a)(3) specifies that a petitioner may be represented "by an attorney in the United States, as defined in § 1.1(f) of this chapter, by an attorney outside the United States as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter." In this case, the person listed on the G-28 is not an authorized representative.

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 June 8, 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, including updated contact information.

On July 30, 2007, the director denied the application because the applicant had failed to establish his continuous unlawful presence during the required period. The record notes that the updated contact numbers were invalid or did not accept calls.

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 [unreadable] asserting the applicant worked for his company between April 1986 and June 1987.
- (2) Statement from [unreadable] asserting the applicant lived with him at a particular address in Brooklyn.
- (3) Statement from [unreadable] asserting the applicant worked at his company from July 1988 to November 1989.
- (4) Statement from [unreadable] asserting that the applicant lived with him at an address in Brooklyn between March 1981 and January 1985, and asserts the applicant's portion of the rent and utilities were in cash. The affiant did not provide any proof that the rent and utilities were in his name.
- (5) Statement from [unreadable] asserting the applicant worked for him from May 1981 to September 12, 1985.
- (6) Statement from [unreadable] listing the applicant's addresses from March 1981. The affiant provides no other information.
- (7) Statement from [unreadable] listing the applicant's addresses from March 1981 to January 1991.

As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation. 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 alleged a minimal body of facts in an attempt to satisfy the criteria for legalization, leaving USCIS with no context in which to verify or corroborate his assertions. Although the applicant has submitted several third party statements, 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 director noted in the NOID and in his decision that the applicant had failed to establish that he had entered the United States prior to January 1, 1982, and had resided unlawfully continuously thereafter for the duration of the required period. The applicant claims to have entered by boat as a Crewman in New York City, but has failed to provide any documentary evidence to support this assertion. The applicant later claims that he entered without inspection, and thus cannot provide any evidence of his entry. This is implausible for someone who arrived by boat. It is not unreasonable to expect that individuals who crossed a border without inspection will have some evidence of their travels, or provide some information about the circumstances surrounding their arrival to the United States. The applicant has failed to provide any such documentation.

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. In light of the minimal evidence furnished, USCIS has been unable to contact or verify the third party statements by the applicant. As noted by the director NOID, he was unable to contact several of the affiants. The applicant submitted additional contact information in response to the NOID but those numbers were disconnected or did not accept calls as well.

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). In this case all of the documents above appear to have been written by the same person, as they contain the same formatted layout, same phraseology ("To whom it may concern"), same misspellings ("Truly"), and are all Xerox copies (no originals). This raises serious doubts about the manner of their production, their authenticity, and the AAO does not find them credible. USCIS is of course free to determine that such documentation is not accurate or credible. *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *see also* 8 U.S.C. Section 1255(a), Section 245 of The Act. As a matter of discretion USCIS may disregard an alleged fact it determines is not accurate or credible. *Id.* at 11; *see also Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001)(reasoning that USCIS was free to reject facts it found lacking in credibility).

The discrepancies 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.

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