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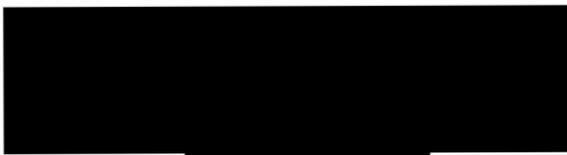
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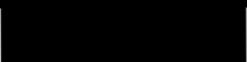
U.S. Citizenship  
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Services

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L2



FILE:



MSC 03 147 61924

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 "John F. 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 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 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).

"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.

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 14, 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 and additional third party statements.

On July 31, 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 by [REDACTED] asserting he has known the applicant since 1981, and that he rented an apartment from him in 1983 – 1984. This statement, bearing a business name centered on the top line, is formatted exactly like other statements.
- (2) Statement by [REDACTED] asserting he has known the applicant since 1985.
- (3) Statement by [REDACTED] that he is a relative of the applicant and has known him since December 1985. An undated picture is included with this statement.
- (4) Statement by [REDACTED] asserting the applicant is his uncle, and that he has known him since 1981. An undated picture is included with this statement.
- (5) Statement by [REDACTED] asserting he has known the applicant since June 1981. An undated picture is included with this statement.
- (6) Statement by [REDACTED] asserting he has known the applicant since December 1985.
- (7) Statement by [REDACTED], bearing a business address in Scottsdale, AZ, asserting the applicant was a patient at his psychiatric Clinic in Danville, Illinois on June 10<sup>th</sup> and July 8<sup>th</sup> in 1985. The affiant does not reveal the source of his information, and the document's format is exactly the same as others submitted by the applicant, raising doubts about its manner of production and authenticity. The applicant has

asserted that he lived in Brooklyn during this time, it is not plausible that he visited a clinic in Illinois.

- (8) Statement from [REDACTED] of the [REDACTED] Construction Company asserting he has known the applicant since 1981. The letter is a copy, cannot be verified as authentic, and is generic in its statement provides little support for the applicant's assertions.

As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation. In this case the applicant has not submitted any primary evidence, and relies solely on third party statements to establish eligibility. 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. The statements submitted by the applicant do not provide any significant level of detail such that USCIS can make an informed determination that the applicant's assertions are true. Although a number of statements have been submitted, they consist primarily of generic statements such as having known the applicant since 1981 and broad assertions of frequent contact. None of the statements contain enough information or detail to be corroborated by other evidence in the record. 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 above, several of the statements are not credible and raise doubts about the applicant's veracity. The record contains other inconsistencies as well. The applicant listed the birth of his son in Bangladesh as March 13, 1986, and yet has claimed that his wife did not come to the United States until 1999 and that his only trip to Bangladesh was from March 20, 1985, to May 20, 1985. The applicant has failed to provide any details about how he could have departed and re-entered the United States, has failed to provide any details about his manner of travel, or corroborated his assertions with evidence of his travels. The applicant has provided such a minimal amount of information and evidence that his assertions appear implausible and fabricated.

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.*

In addition, the applicant's admitted absence breaks his chain of continuous unlawful residence. As the applicant was absent from the United States for a period of 61 days and is thus ineligible as a matter of law due to an absence greater than 45 days.

The discrepancies and errors 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.