

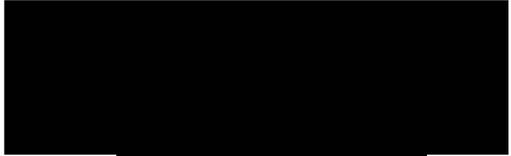


U.S. Citizenship  
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Services

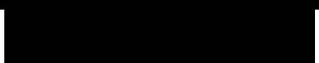
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FILE:



MSC 02 253 60248

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. 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 July 19, 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 August 28, 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 member of the mosque since June 1981. The letter does not conform to the requirements of a church letter established at 8 C.F.R. § 245a.2(d)(3)(i), and does not state the source of its information. It cannot be determined that this statement is credible or accurate.
- (2) Social Security statement indicating the applicant earned income in 1987, but none in 1988. This evidence does not support the applicant's assertions of continuous unlawful presence for the duration of the required period, and raises doubts about the applicant's presence in 1988.
- (3) Copy of a W-2 form with the applicant's name handwritten in, for the year 1987. The applicant's name is handwritten in to the form, an irregularity which sheds doubt on the authenticity of this document.
- (4) Statement by [REDACTED] asserting the applicant lived at her address in 1987 and worked as a taxi cab driver. This is not consistent with the other information provided by the applicant, asserting that he worked for the [REDACTED] in 1987, and did not work in 1988.
- (5) Statement by [REDACTED] asserting he and the applicant lived in the same apartment/s from December 1981 to April 1993.

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). As noted above the third party statements submitted by the applicant are not internally consistent and fail to provide sufficient detail to establish they are accurate or even authentic.

The record also contains inconsistencies which are not clarified by evidence in the record. In his Application for Temporary Residence, filed in 1991, the applicant asserts that he was absent from the United States from October 4, 1987, to December 10, 1987, and August 19, 1986 to October 14, 1986. The applicant has provided an absolute minimal amount of information about his life and activities in the United States or his entry into the United States, such that his assertions appear factually isolated and fail to provide USCIS any context in which to evaluate his claims. He has failed to explain how he could have left the United States and re-entered on these two occasions without any documentation, and has provided no information or corroborating documentation about any travel through other countries to get to and from the United States. These two absences, of roughly 66 days and 54 days, are each in excess of the allowable 45 day absences and thus break his chain of continuous unlawful residence.

There is also documentation in the record indicating that the applicant was actually residing in Washington, DC, and working as a taxi driver in 1986. The applicant has never made any mention of this employment or his residence in Washington, DC, and has only asserted that he resided at a series of addresses in New York.

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 has not submitted any primary documents, and relies on third party affidavits to carry his burden. 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 to be sufficiently probative 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 light of the inconsistencies noted in the record the meager evidence submitted by the applicant is not sufficient to carry his burden.

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.