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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 03 249 62111

Office: LOS ANGELES

Date: FEB 04 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.

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 Director, Los Angeles, 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, and because the applicant had indicated that he had been absent from the United States for periods greater than 45 days. 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).

"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 April 26, 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 evidence.

On June 11, 2007, the director denied the application because the applicant had failed to establish his continuous unlawful presence during the required period and because the applicant was ineligible due to absences from the United States greater than 45 days.

On appeal the applicant asks that USCIS reconsider his application.

The applicant has submitted extensive evidence of his residence in the United States beginning around 1990, subsequent to the required period. Evidence which covers a period after the required period is not relevant to these proceedings and will not be discussed.

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

- (1) Statement form from [REDACTED] asserting the applicant performed work for him in late 1981 and early 1982.
- (2) Statement form from [REDACTED] asserting she met the applicant in 1982 and that they would see each other three times a week for coffee during the period 1982 to 1988.
- (3) Statement by [REDACTED] asserting he has been acquainted with the applicant since 1982.
- (4) Statement by [REDACTED] asserting he has been acquainted with the applicant since 1982.

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).

An examination of the record reveals several inconsistencies in the applicant's assertions. When filing his application for Temporary Residence in 1990 the applicant only listed one child. When filing his LIFE application the applicant revealed that he had four children, and that two had been born in Mexico during the required period. The dates of these births do not correspond with the applicant's listed travel dates, and thus contradict his assertions of continuous unlawful residence and presence in the United States. In addition, the applicant made statements during his LIFE interviews indicating that he had been absent from the United States for periods greater than 45 days. On February 27, 1996, he informed a USCIS officer that he had been absent from the United States from March 1987 through November 1987. The applicant also signed a statement on April 26, 2007, that he entered the United States in 1982, and that in 1985 he traveled outside the United States for a period between two and three months. Absences of lengths greater than 45 days break the applicant's chain of continuous unlawful residence and render him ineligible for LIFE Act legalization.

Documents which generically assert an affiant has known an applicant since a particular year are not sufficiently probative to support assertions of eligibility. While the documents listed at Nos. 1 and 2 appear credible, they are not sufficiently probative to establish the applicant's eligibility. The applicant has not submitted any primary documentation for the required period, and relies entirely on affidavits. Of those third party affidavits only one attests to the applicant's presence prior to January 1, 1982. In light of the contradictory testimony noted above the documentation submitted is not sufficiently probative to establish the applicant's eligibility.

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. 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.