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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: NEW YORK Date: FEB 0 4 2009

MSC 03 043 61505

IN RE: Applicant: [redacted]

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:

[redacted]

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 counsel for the applicant asserts that the evidence is credible and sufficient to establish eligibility.

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 May 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 statements.

On August 20, 2007, the director denied the application because the applicant had failed to establish his continuous unlawful presence during the required period.

On appeal counsel for the applicant asserts that the evidence is credible and sufficient to establish eligibility.

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

(1) Statement from r asserting he has known the applicant since November 1981, when he met the applicant at a "social gathering" and remained in close contact with him throughout the required period.
(2) Statement from asserting he has known the applicant since November 1981, and that they remained in close contact throughout the duration of the required period.
(3) Statement from listing the applicant's address as Jamaica, NY from March, 1982, until 1991.
(4) Statement from asserting he has known the applicant since 1986, and that they maintained significant contact as friends.
(5) Statement from asserting he had lived with the applicant since October 1, 1981. The applicant has asserted that he arrived to the United States on October 27, 1981. Thus, this document is not sufficiently probative or accurate to lend weight to the applicant's assertions.
(6) Statement from asserting the applicant lived at a . address in New York from Ocotober 1981 to the present (1991), and that the applicant was living with him. This address is not consistent with the addresses listed by other affiants and the affiant himself.
(7) Statement from listing the applicant's address as . in Jamaica, New York.

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).

The applicant has not submitted any primary evidence, and relies entirely on third party statements to establish eligibility for the required period. CIS 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 CIS 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 CIS was free to reject facts it found lacking in credibility).

The statements discussed at Nos. 1, 2, and 4 above, while lengthy, do not provide any specific details about the applicant's unlawful residence in the United States, such as addresses, employment, etc. Further, the statements contradict those made by the same affiants at an earlier time. As an example, [redacted] provided a statement in 2004 asserting that he has been a resident of New York since 1970, and that he met the applicant in December 1981 when he was doing work on a neighbor's house. [redacted] submitted an earlier statement that he had only met the applicant in 1984, not in November 1981. These statements contradict those submitted in response to the NOID, indicating that the affiants' recollections are not sufficiently accurate to support the applicant's assertions. Even without regarding the inaccuracies they are not sufficiently probative of the applicant's continuous unlawful residence to carry the applicant's burden.

On appeal counsel makes numerous assertions attempting to explain the inconsistencies noted by the director. First, the unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. Further, asserting that the applicant was "brought to JFK" with a group by an agent, who confiscated their travel documents after not being asked any questions is implausible. Such facts, if true, would indicate that either the applicant entered using another person's travel documents, his own travel documents, and in either case would indicate that there is some record of entry based on inspection. In either situation the applicant has failed to fully explain how he was not inspected after arriving at JFK, and the failure to do so after having been sent a NOID by the director gives rise to a negative inference. The applicant also claims to have traveled across the border to Canada, and in completing legalization questionnaires asserted that he had entered without inspection. However, a third party statement submitted by applicant provides a detailed description of their crossing and interview by immigration officers.

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 this case the applicant has not offered any evidence or

clearly articulated how he could enter JFK or cross the Canadian border without inspection, and counsel's statements are implausible and moot as they do not constitute evidence.

The discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the applicant's eligibility is not credible. In addition, it appears the applicant is not prima facie eligible for LIFE act application, as there is no evidence in the record that the applicant actually filed a written claim for class membership in one of the legalization lawsuits, nor is there evidence in the record that the applicant actually departed the United States in 1987 and was front desked in his attempt to file a legalization application. Accordingly, the applicant has not established the eligibility and the appeal will be dismissed.

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