

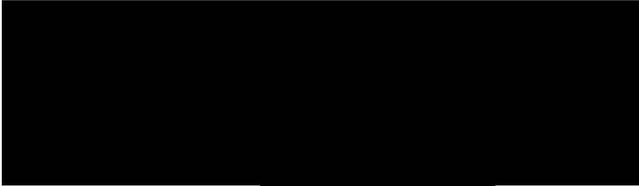
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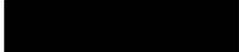
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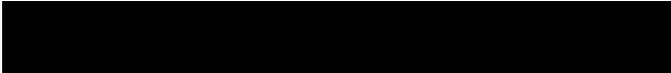
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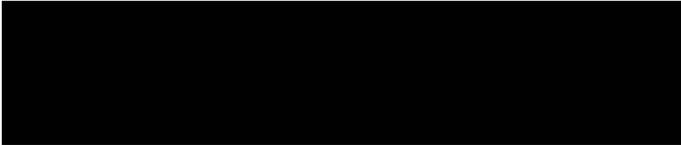
FEB 04 2009

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:



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. The director noted an inconsistency in the applicant's testimony and application.

On appeal counsel for the applicant asserts the director's decision was illegal and erroneous.

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 September 10, 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 director also noted inconsistencies in the applicant's testimony.

The applicant submitted a response on May 17, 2007, as well as additional evidence.

On October 11, 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 signed by [REDACTED] asserting that the applicant has been known to him since 1981 through social contacts and attendance at Bangladeshi cultural programs. The affiant did not provide identification.
- (2) Statement signed on October 6, 2007, by [REDACTED] asserting the applicant has lived in the United States since 1981, and knows him as a family friend. The affiant then makes a second declaration that he met the applicant at a birthday party in 1980, and that the applicant visited his restaurant. The affiant's contradicting statement reflects negatively on the credibility of the document, raising doubts about the manner of its production. The statement is not sufficiently credible to warrant any evidentiary weight
- (3) Statement by [REDACTED] asserting that he has known the applicant since 1981. This document contains the exact same language and format as the previous documents, and references Bangladeshi cultural activities as do the other affiants, raising doubts about its authenticity and manner of production. This statement is not sufficiently probative or credible to support the applicant's assertions.
- (4) Statement by [REDACTED] asserting that he met the applicant in the first part of 1981 when the applicant's wife came to his rug store. He also asserts the applicant get a job at "A JU Cleaning Co." in 1981. The applicant has asserted that he worked for a limo company during this period, and did not list any such employment in his Application for Temporary Residence. This document raises doubts about the veracity of the applicant's assertions.
- (5) Statement signed By [REDACTED] asserting she has known the applicant since 1981 when they "met at a shopping center." This document bears the same format as the previous documents.
- (6) A second statement by [REDACTED] asserting the applicant dined at his restaurant in 1980, and was a regular customer. The AAO would note that although this affiant is clearly the same affiant listed at No. 2 above the affiant spelled

his name differently in the signature block, raising doubts about the authenticity and credibility of the document.

- (7) Statement by [REDACTED] asserting he has known the applicant since August, 1980.
- (8) Statement by [REDACTED] asserting the applicant worked at JJ & T Limousines since 1980. This affiant also states that "records were not always kept" on cash employees. This indicates that the affiant's assertions are based on personal recollection.
- (9) Commercial check stubs typewritten to the applicant and listing dates in January and February 1981 from JJ & T Limousine. These documents cannot be independently verified as contemporaneous, and do not appear to be 25 year old check receipts. It would also be reasonable to assume that if the applicant was given the receipts off of paychecks, as these documents are supposed to represent, that the affiant listed at No. 8 above would be able to verify the applicant's employment by records, and that the applicant was not actually paid in cash. The statement at No. 8 above and these check receipts seem implausible given the nature of the applicant's claimed employment.
- (10) Handwritten receipts for rent at [REDACTED] in Los Angeles, dated 1985, 1986, 1987, 1988 and 1989. Handwritten receipts such as this are not considered credible evidence as they cannot be independently verified. Applications submitted with unverifiable documentation may be denied. 8 C.F.R. § 245a.2(d). Further, the dates for these receipts are not consistent with the address listed by the applicant for this period, contradicting his own testimony.
- (11) Document labeled "Rental Agreement" and dated May 1981, for the address at [REDACTED] in Hollywood, California. This document cannot be clearly authenticated, and the AAO would note that the leasing party is the same entity listed as the location for JJ & T limousine above [REDACTED]

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 by the director, and discussed above, the evidence submitted by the applicant contains a number of contradictions, raising doubts about their accuracy and credibility. The record also contains signed and sworn statements by the applicant stating that he worked at a limousine company in 1984 – 1988, not the period attested to in statements above, and that the applicant was married in Bangladesh in July 1983. The applicant had failed to list any travel to Bangladesh in his applications for Temporary Residence, and contradict his assertions that he moved to the United States "with his wife" in 1980. On appeal counsel asserts the applicant had two marriages, and that the one to his Bangladeshi wife in Bangladesh in 1982 was not the "traditional wedding," which the applicant held in Los Angeles in 1983. This still does not explain the applicant's presence in Bangladesh in 1982, and appears implausible that the applicant would not have a traditional Bangladesh wedding while in Bangladesh, and would instead have a traditional Bangladesh wedding in Los Angeles. It also casts doubt on the applicant's assertion that he entered the United States with his "wife" in 1980. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the

petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The documents submitted by the applicant fail to clarify his contradictory testimony. Documents which generically assert an affiant has known an applicant since a particular year are not sufficiently probative to support assertions of eligibility. An examination of the body of statements reveals similarities in language and format, despite alleging to be from completely different parties. The other irregularities noted above raise doubts about their manner of production, and cast doubt about their credibility. 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 the documents submitted are not sufficiently probative or credible to overcome the inconsistencies and contradictions noted by the director.

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.* These contradictions and inconsistencies have not been clarified by the applicant, nor are they explained by evidence in the record.

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.