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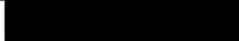
U.S. Citizenship
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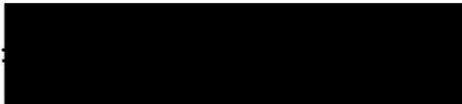
Office: NEW YORK

Date:

FEB 04 2009

MSC 01 304 60232

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 her 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 June 22, 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 additional statements.

On August 3, 2007, the director denied the application because the applicant had failed to establish her continuous unlawful presence during the required period.

On appeal the applicant asks that USCIS reconsider her application. Relevant to the period in question the record contains the following evidence:

- (1) Statement from [REDACTED] asserting that he and the applicant worked together at the Caribe food company from 1985 to 1990.
- (2) Statement from [REDACTED] asserting the applicant entered the United States in 1981.
- (3) Three undated photographs.

As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation. In this case the general lack of detail concerning the applicant's whereabouts and activities during the required period reflects poorly on her assertions of continuous unlawful residence and presence. The applicant has alleged a minimal body of facts in an attempt to satisfy the criteria for legalization, leaving USCIS with no context in which to verify or corroborate her assertions. Without the context in which to view the affiants' assertions they appear isolated factually, do not present an overall picture of the applicant's residence and presence, are not corroborated by other assertions contained in the record, and are not amenable to verification. In addition to this the applicant has submitted only three affidavits. 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 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 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.

The record contains a number of documents submitted with the applicant's Form I-687, Application for Temporary Residence. These include:

- (4) Statement from [REDACTED] asserting the applicant attended the church, and listing three addresses: 1982 – 1992, [REDACTED] New York, NY; 1992 – 1999, 60 [REDACTED] New York, NY; 1999 – 2004, [REDACTED] New York, NY.
- (5) Statement from [REDACTED] listing two addresses, [REDACTED] in New York from 1981 – 1990, and [REDACTED] in Philadelphia, Pennsylvania, from May 1990 to the date of her statement (May 23, 1990).
- (6) Statement from [REDACTED] listing two addresses, [REDACTED] in New York from 1981 – 1990, [REDACTED] in Philadelphia, Pennsylvania from May 1990 until “present” (statement is undated and improperly notarized).
- (7) Statements from [REDACTED] asserting that the applicant took care of her sister's children in 1981 at the [REDACTED] address in New York, then moved to her house and rented an apartment while watching her children beginning in May 1990.

The statement at No. 4 above contrasts with statements made by other affiants who assert the applicant left New York in 1990 to move to Philadelphia. When seeking employment authorization in 2001 the applicant asserted that the date of her last entry was 1993 from the Dominican Republic, that she entered without inspection at John F. Kennedy Airport, and listed an alias of F [REDACTED]. It is implausible that someone could enter the United States without inspection at J.F.K. Airport, and the applicant listed a New York address, as opposed to a Philadelphia address. When seeking parole to travel in 1993 the applicant listed the [REDACTED] [REDACTED] New York address. When applying for employment authorization replacement card in 1992 she listed the [REDACTED] address, New York. And in her undated I-687 Application for Temporary Residence the applicant listed her Philadelphia address. The applicant's testimony is inconsistent.

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 light of the minimal evidence which has been submitted, the statements submitted by the applicant fail to carry her burden and in fact raise questions about the veracity of her assertions.

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.