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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES

Date:

MSC 02 043 63238

JAN 02 2009

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 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 August 21, 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 asserting his evidence was credible and sufficient to establish eligibility.

On September 21, 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) Copy of letter dated May 14, 1982, from [REDACTED], discussing results of a medical test. The letter is unusual in its format and for many misspellings contained in the document.
- (2) Statement from [REDACTED] asserting the applicant was "personally known to me from my country and lived with me in this address," and lists the applicant address from May 1986 to December 1987.
- (3) Copy of letter from [REDACTED] asserting that the applicant has been attending prayers at the Jamaica "Muzlim" Centre since 1981. This document is unusual in its format and numerous misspellings, does not reveal the source of its information, and does not comply with the criteria for a church letter outlined at 8 C.F.R. § 245a.2(d)(3)(i).
- (4) Copy of a document labeled "Doctor's Office" asserting the applicant was seen by [REDACTED] in 1982 and 1985. This document does not reveal the source of its information, and is unusual for its format, appearing to be a prescription form copied over a blank page with text to create the letter.
- (5) Statement from [REDACTED] asserting the applicant has been working for him as a housekeeper.
- (6) Statement from [REDACTED] asserting the applicant worked for him for a period in 1988 and 1989.
- (7) Statement from [REDACTED] asserting the applicant worked at Sherwood Drugs from April 1988 to November 1988.
- (8) Statement from [REDACTED] asserting the applicant worked for Bronx Water Proofing for a period in 1987 and 1988.
- (9) Statement from [REDACTED] asserting the applicant worked for "International Trade" as "security" from May 1983 to February 1987.
- (10) Statement from [REDACTED] asserting the applicant worked for that company from February 1982 to November 1982.

- (11) Statement from Jamaica Muslim Center, Inc., date May 12, 1983, asserting the applicant has attended services there from May 1981 to November 1987. This letter is dated prior to the period discussed in the text of the letter, and has clearly been backdated.

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 affidavits to establish eligibility for the required period. However, documents which generically assert an affiant has known an applicant since a particular year are not sufficiently probative to support assertions of eligibility. Casual acquaintance with an applicant such as meeting someone at a party, seeing them in church, or seeing them on the street corner, is not sufficient to demonstrate that such affiant has actual direct knowledge of an applicant's continuous, unlawful residence. 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 director outlined numerous specific factors which undermined the credibility of the documents, or otherwise affected their evidentiary weight. This included statements that were not notarized, generic statements which failed to demonstrate an actual direct knowledge of the events to which they were testifying, employment letters which do not meet the criteria established for employment letters, as well as other problems with the evidence. Counsel simply responded that the evidence was credible and concluded that the applicant was eligible. The AAO is not persuaded by counsel's assertions. 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).

An examination of the evidence submitted by the applicant does reveal the problems noted by the director, including statements with no means of verifications, statements which do not reveal the source of their information or verify the identity of the affiants, and documents which lack credibility. Specifically, the "doctor's note" listed at No. 4, above, is dated two years prior to any use of the area code listed in the address, and USCIS finds it implausible that this document is actually from the typewritten date.

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 addition, the letter from Jamaica Muslim Center dated May 12, 1983, is clearly not credible as it is dated 1983 but discusses a period to 1987. The letters from No. 5 – 10 above are all the exact same format, and use the exact same language (“To Whom It May Concern”), such that it appears they were all written by the same person despite being from different third parties. The doubts about their manner of production and their similarity in format indicate these letters are not authentic, and thus not credible. Further, none of the letters comply with the criteria established for employment letters at 8 C.F.R. § 245a.2(d)(3)(i).

The general lack of detail concerning the applicant’s whereabouts and activities during the required period reflects poorly on his assertions of continuous unlawful residence and presence. The applicant has made 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 his assertions. Without the context in which to view the applicant’s 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. When the facts asserted in the record are viewed in their totality with the evidence presented they are not sufficiently supported to establish eligibility. In light of questionable documents that have been submitted, the applicant has failed to establish eligibility.

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.