

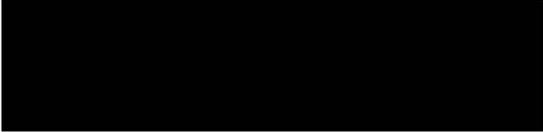
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK Date:

JAN 02 2009

MSC 02 008 62123

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.

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 CIS 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.

Citizenship and Immigration Services (CIS) 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 July 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 a written response and some additional affidavits.

On September 23, 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 CIS reconsider his application.

The applicant has submitted a number of documents which cover a period outside of the required period, as well as documents which do not clearly relate to a particular time. These documents are not relevant and will not be discussed.

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

- (1) Photocopy of handwritten receipt for refrigeration service dated 1986.
- (2) Copy of an envelope with a date stamp of 1983, but which contains an "s" stamp issued in 1993 by the USPS.
- (3) Statement by [REDACTED] listing the applicants addresses from "About 1981".
- (4) Statement by [REDACTED] listing the applicants addresses from "About 1981".
- (5) Statement by [REDACTED] listing the applicants addresses from "About 1981".
- (6) Statement by [REDACTED] listing the applicants addresses from "About 1981".
- (7) Statement by [REDACTED] listing the applicants addresses from "About 1981".

As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation. The minimal evidence furnished for the required period in this case 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).

At the outset an examination of the affidavits reveal that they are generic forms to begin with, and it is clear they were completed by the same person then photocopied for individual signatures. The statements provide virtually no probative information, other than asserting that the applicant lived at certain addresses throughout the required period and that the applicant only traveled home once to see parents who were ill. As noted by the director this is inconsistent with

the date and reasons for travel listed by the applicant on his Form I-687. The AAO finds these affidavits lacking in credibility and will not accord them any weight in these proceedings. The applicant has submitted some hand-written receipts. As noted by the director the documents contain irregularities, and the applicant has failed to explain the circumstances behind the receipts, clarify the irregularities, or even address the issue. As an example the date stamped envelope noted at No. 2 above, which contains a mailed stamp earlier than the issue date of the 29 cent stamp it bears. Due to their susceptibility to fraud, and an inability to verify authenticity, hand-written receipts are insufficiently credible to lend weight to an applicant's assertions. In this case the hand-written receipts do not appear authentic, and are rejected as credible evidence.

Counsel cites to *Mathews v. Eldridge*, 424 U.S. 319 (1976), but fails to explain how, in the exercise of discretion, CIS has violated the applicant's due process rights. The director clearly explained why the applicant's evidence was not sufficient to establish his burden, and in exercising his discretion, determined that the applicant's evidence was not sufficiently credible or probative to establish eligibility. 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 applicant has been unable to explain inconsistencies in his testimony and the documentation submitted, and instead counsel and applicant merely assert that his due process rights have been violated, and that CIS must accept the applicant's assertions. It is not sufficient for the applicant and counsel to simply disregard the director's conclusions. 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.*

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 CIS 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 provide 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 and frequency of the relationships were. Further, Applications submitted with unverifiable documentation may be denied. 8 C.F.R. 245a.16(a)(5). The documents and affidavits submitted are internally inconsistent, generic in nature, and lack credibility.

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.