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U.S. Citizenship
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Services

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FILE:

MSC 02 009 63466

Office: LOS ANGELES

Date: JAN 02 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:

SELF-REPRESENTED

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.

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 July 27, 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 did not respond.

On September 4, 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, and refers to evidence previously submitted to USCIS.

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

- (1) Statement from [redacted] listing the applicant's addresses in the United States. This statement employs the same misspelling of [redacted] New York as the applicant's statement. This document is not sufficiently probative or credible to warrant any significant weight in these proceedings.
- (2) A copy of a letter from [unreadable] asserting the applicant worked as a "helper" in the [redacted]. This letter is typed, bears the same format as other documents ("To Whom It May Concern"), and is dated December 15, 1985. The irregularities and appearance of this document indicate that it is not authentic and it will not be accorded any weight in these proceedings.
- (3) Statement from [redacted] asserting he has known the applicant since his arrival in New York in September, 1981.
- (4) Note on letterhead for [redacted], asserting the applicant visited his office on the date of the letter (February 3, 1982). The AAO finds it implausible that this letter would have been written – clearly in contemplation of seeking legalization – on the date listed. The affiant does not reveal the source of his information or provide any other corroborating evidence that the applicant actually visited his office on that date. This document adds little weight to the applicant's assertions of eligibility.

As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation. The applicant referred to previously submitted documents such as plane tickets, receipts and other documentation but the record contains no such evidence, and no evidence that any such evidence ever existed. The minimal evidence furnished 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).

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 are so generic that they lack credibility and are not sufficiently probative to add any significant weight to the applicant's assertions.

The record contains other inconsistencies and contradictions indicating the applicant is not credible and that he is not eligible for LIFE Act legalization. When the applicant submitted his Form I-687 in 1990 he listed a trip to Pakistan in 1987 stating that his father died. He lists his father as deceased on Biographical Questionnaire completed in 2002. Despite these assertions the record contains a copy of his father's death certificate indicating that his father died on July 15, 2004.

The record also contains a copy of the applicant's previous passport showing that he was issued an F-1 Visa with multiple entries in Peshawar on April 23, 1981, and valid through April 23, 1982. The applicant failed to reveal this information to USCIS in these proceedings because it contradicts his assertions of having entered the United States prior to January 1, 1982, in an unlawful status. This establishes that the applicant is ineligible by law as his entry in 1981 was a lawful entry into the United States and he would have remained in lawful status through April 23, 1982.

Finally, the applicant was detained at Los Angeles International Airport in 2006, and indicated that he had been living in the United States since 1987. USCIS records indicate a lawful entry in 1987. The applicant asserts he was stating when he first entered the United States. This explanation is implausible, even disregarding the prior contradictions in his testimony, as the question asked was not when he first entered or last entered the United States, but how long he had been residing in the United States. The applicant responded that he had been living in the United States since 1987.

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.*

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.