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U.S. Citizenship  
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FILE: [REDACTED]  
MSC 02 327 61411

Office: NEW YORK Date: **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:

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, New York, and is now before the Administrative Appeals Office (AAO) 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. 3 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.

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1) as follows: An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded *forty five(45) days*, and the aggregate of all absences has not exceeded one hundred and eighty days (180) between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

On July 5, 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 sufficient, and that inconsistencies were due to typos or mistakes.

On August 3, 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 the applicant was "known to her" since 1981, and that she met the applicant selling flowers on the street.
- (2) Statements, signed by [redacted], asserting the applicant was "known to him" since 1981, and that the applicant's father requested he take care of the applicant when he came to the United States. The affiant more specifically states that he met the applicant in July 1981 and he arrived by plane at JFK.
- (3) Statements from [redacted] asserting that the applicant was "known to him" since 1981, and that immediately after the applicant's arrival in June 1981 he stayed with the affiant in Astoria, New York.
- (4) Statements from [redacted] asserting the applicant was "known to him" since 1981, and that they lived together for a period in Astoria, New York.
- (5) Statement by [redacted] asserting the applicant has made contributions to the development of the Mosque since 1987.
- (6) Statement by [redacted] asserting the applicant lived with him in 1987. This affiant also submitted a statement as the owner of [redacted] asserting the applicant worked with his company since May of 1987.
- (7) Statement by [name unreadable] asserting the applicant has worked at the [redacted] since July 1983.

(8) Copy of a retail receipt for a camera from \_\_\_\_\_ dated December 22, 1981. However, when called, \_\_\_\_\_ stated that the store was not opened until 1984 and that the receipt had 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 record contains an Affidavit for Determination of Class Membership for LULAC in which the applicant states he first entered the United States on June 15, 1983, with a visa, and overstayed. He also stated that he left the United States on April 10, 1984, and returned on July 17<sup>th</sup>, 1984. This contradicts the applicant's assertions of his initial entry into the United States, and the absence of 65 days represents a clear break in the applicant's chain of unlawful residence.

The record also contains a Form I-687 in which the applicant lists all of his U.S. addresses since entry as beginning in June 1983, just like the Class Membership questionnaire discussed above. The form also lists his April 1984 to June 1984 visit to Bangladesh to "visit his mother," indicating, as above, that the applicant had been absent for a period of 65 days.

During an interview on October 21, 2004, the applicant asserted that he entered the United States when he was "thirteen," which, given his birth date, would be consistent with his prior statements that he entered the United States in 1983, despite the fact that he later changed his testimony by asserting that "1983" was a typo. He also acknowledged his 65 day departure in 1984.

Thus, in this case the applicant himself has made numerous inconsistent representations, and wishes to change his assertions to suit eligibility on appeal. In light of this the applicant has submitted no primary evidence of his entry into the United States or his unlawful residence and continuous presence throughout the required period, and has failed to explain the inconsistencies 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 not sufficient to simply change one's testimony, 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 USCIS can make an informed determination that the applicant has been residing continuously in an unlawful status for the duration of the required period. The documents detailed in the Nos. 1 – 4 above appear to have all been printed on the same printer, as evidenced by the streaking pattern on the documents and the similarity in format, raising doubts about their authenticity or manner of production. In

addition, the documents at Nos. 6 and 7 above bear a striking similarity in format and language, despite being from different parties, which raises doubts about their authenticity. These letters do not meet the criteria established for employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F) and are not clearly credible. Finally, as noted by the director, when called by USCIS the business listed on the retail receipt at No. 8 above stated that the receipt must have been backdated because the business was not established until 1984. Clearly, the evidence submitted by the applicant lacks credibility and fails to overcome the doubts raised by his own contradictory statements.

The discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the beneficiary's eligibility is not credible. As noted by the director the evidence submitted by the applicant is highly suspect, and the applicant himself has provided numerous inconsistent assertions. When viewed in its totality the record indicates that the applicant probably did not enter the United States until 1983. Further, the applicant has failed to adequately corroborate the reasons for his extended absence in 1984 and is ineligible as a matter of law pursuant to 8 C.F.R. § 245a.15(c)(1)(i).

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.