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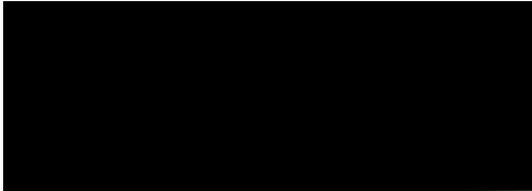
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 01 361 60439

Office: NEW YORK Date: JAN 05 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.

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 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.

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 3, 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 two additional affidavits.

On August 29, 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 from [REDACTED] asserting the applicant worked at [REDACTED] from September 1985 to September 1989.
- (2) Statement from [REDACTED] asserting the applicant did construction work for [REDACTED] from May 1983 to August 1985.
- (3) Statement from [REDACTED] asserting the applicant worked as a handy-man at [REDACTED] from March 1981 to February 1983.
- (4) Statement from [REDACTED] asserting that he and the applicant lived together in Brooklyn, New York, from December 1980 to November 1985.
- (5) Statement from [REDACTED] asserting he has known the applicant since 1980.
- (6) Statement by [REDACTED] asserting that the applicant lived with him from December 1985 to October 1989.

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. He has not submitted proof of his entry into Canada prior to entering the United States, has not submitted any pay stubs or utility bills to substantiate the claims of affiants, and has provided little detailed information about his whereabouts and activities during the required period. 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 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.

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.

Each of the letters asserting employment at Nos. 1 – 3 above bear a very similar format and writing style such as bolding of names, suggesting that the same person created each of the documents, despite the fact that they are allegedly from three different people. It is also noted that the very same letters were submitted with the applicant's Form I-687 in 1990, with only minor changes to the dates and titles of the affiants, raising doubts about their authenticity. The documents are not supported or corroborated by any other information in the record, do not reveal the source of their information, and do not satisfy the criteria for employment letters. The letters are not sufficiently credible to lend any weight to the applicant's assertions.

The statement from [REDACTED] appears to have an altered date, raising doubts about the credibility of the document.

The applicant lists his date of marriage to [REDACTED] as June 21, 1987, despite the fact that on his I-687 he listed his travel in 1987 as a family emergency. The applicant failed to note the employment with [REDACTED] on his I-687, and instead asserted he was self-employed. Further, on his I-687 the applicant lists the birth of his son [REDACTED] z as April 5, 1988, yet the record contains a certified letter from [REDACTED] dated September 20, 1992, detailing how a flood washed through his wife's village, that [REDACTED] was missing necessitating his return, and certifying that the child's birthdate was actually October 10, 1982. This contradiction seriously undermines the applicant's credibility. The inconsistencies noted above lead the AAO to the conclusion that evidence of the applicant's eligibility is not credible.

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 evidence contradicting the applicant's assertions the third party statements submitted above are not sufficiently probative to clarify the inconsistencies or establish eligibility.

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.