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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: NEW YORK Date:

JAN 06 2009

MSC 03 247 62507

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 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 inconsistencies in the applicant's testimony and application.

On appeal the applicant asserts he is eligible.

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 did not respond.

On September 21, 2007, the director denied the application because the applicant had failed to respond to inconsistencies noted in the record and thus could not establish his continuous unlawful presence during the required period.

On appeal the applicant asserts he did respond to the director's NOID, but fails to provide evidence of such or submit any additional evidence of his eligibility.

Although the director denied the application due to the inconsistencies contradicting the applicant's assertions, he failed to discuss a superseding basis of ineligibility.

The applicant stated on his Form I-687, Biographical Questionnaire, and during interview that he arrived in October 1981 on a B-2 visa. During interview the applicant indicated that the B-2 visa was a five year visa with multiple entries. This raises doubts about the applicant's unlawful status during the required period.

In light of this the applicant has failed to submit any primary evidence and relies solely on third party statements to establish eligibility.

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

- (1) Copy of a statement by [REDACTED] asserting the applicant lived with him in Brooklyn New York from 1981 to 1990.
- (2) Copy of a statement by [REDACTED] purportedly of [REDACTED] asserting the applicant worked for the company from January 1982 to December 1990. This document is a photocopy of another document, and appears to have been constructed from separate documents as the text is misaligned and the fonts change significantly within the name of the company. The letter is also a copy, fails to detail the source of the information asserted, and does not comply with the criteria established for employment letters 8 C.F.R. § 245a.2(d)(3)(i). Given the lack of probative details and the questionable nature of the document it is not sufficiently credible to accord any weight to the applicant's burden.

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).

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. 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.

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 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 of the relationships were. The documents and affidavits submitted are internally inconsistent, generic in nature, and lack credibility.

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.