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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 269 60691

Office: NEW YORK Date:

JAN 06 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:



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.

Robert P. Wiemann, 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 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 April 18, 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 response on May 17, 2007.

On May 26, 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 that the applicant worked at a newsstand from 1980 to 1984. The affiant does not reveal the source of this information, nor does the letter comply with the criteria established for an employment letter at 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F).
- (2) Statement signed by [REDACTED] asserting the applicant has lived in the United States since 1981. This document has clearly been altered, with text type written over previous text, and the typed name is spelled differently than the signed name. The statement is not sufficiently credible to warrant any evidentiary weight.
- (3) Statement by [REDACTED] asserting the applicant has lived in the United States since 1981. This document contains the exact same language and format as the previous documents, raising doubts about its authenticity or manner of production.
- (4) Handwritten statement signed by [REDACTED] asserting the applicant worked for him from 1984 to 1989. A close examination of this document reveals the same format as the previous letter and an exact resemblance in the signature affixed to the [REDACTED] document, indicating that the same person signed these two documents. This document is rejected as authentic evidence.
- (5) Statement signed by [REDACTED] asserting the applicant has resided in the United States since 1981. This document bears the same format as the previous documents.

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).

Documents which generically assert an affiant has known an applicant since a particular year are not sufficiently probative to support assertions of eligibility. In this case the documents

submitted are not sufficiently probative or credible to overcome the inconsistencies and contradictions noted by the director.

In this case USCIS records indicate the applicant entered the United States in 1986 with a B-2 visa. The record also contains a Form I-687, in which the applicant stated that his only absence was from October 5, 1988, to December 22, 1988. This contradicts the applicant's other assertions throughout the record. The applicant also submitted a Biographical questionnaire in which he states his last address of more than one year outside the United States was in Karachi, Pakistan from 1968 to 1990, and he listed his employment to a date beginning in 1990.

The applicant was interviewed on March 24, 2004. During that interview he stated that he departed the United States in January 1982, and returned 2 – 4 weeks later with a B-2 visa. He also stated that he lived at one address from 1980 to 1989 with his sister, which contradicts the addresses listed on his Form I-687. He submitted a statement via counsel the day of his interview wishing to recant his testimony that he had entered with a B-2 visa in 1982, and to add that he left the United States 1986 and returned with a B-2 visa. The statement also said he could provide evidence of his 1986 entry with a B-2 visa, and yet during a March 31, 1998, class membership interview asserted that he could not provide any evidence of entry during the required period. Finally, the record contains a copy of a page from the applicant's passport noting that he had been issued his passport on March 30, 1986, in Karachi, Pakistan.

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.* These contradictions and inconsistencies have not been clarified by the applicant, nor are they explained by evidence in the record.

Contrary to counsel's assertion simply changing one's testimony is not sufficient to rehabilitate inconsistencies in a record of proceeding, particularly in a case where the applicant has not submitted any primary evidence and the applicant's assertions rest entirely on affidavits. Without verifiable, contemporaneous evidence to corroborate the applicant's assertions USCIS can only rely on the veracity of an applicant's assertions and evidence. Thus, when an applicant's evidence and testimony are inconsistent USCIS is unable to determine where the truth lies.

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.