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U.S. Citizenship
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FILE: [REDACTED]
MSC 01 347 60133

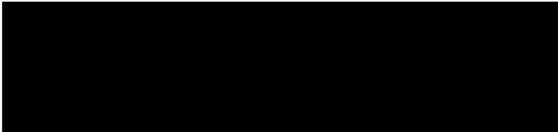
Office: PROVIDENCE

Date: NOV 28 2007

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. 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 Field Office Director, Providence, Rhode Island. The record shows that the first denial was issued on November 15, 2007. However, the director issued a revised decision on March 30, 2007. That matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Based on information discovered after the applicant's legalization interviews, the director determined that the applicant willfully misrepresented facts pertaining to his 1987 absence and subsequent reentry into the United States. The director further determined that the applicant's single absence of over 30 days in 1987 interrupted his continuous unlawful residence as required by section 1104(c)(2)(B) of the LIFE Act and therefore, denied the application.

While the AAO concurs with the director's ultimate conclusion regarding the applicant's eligibility to adjust status under section 1104(c)(2)(B) of the LIFE Act, her analysis underlying the conclusion of willful misrepresentation is flawed and must be addressed by the AAO. Specifically, with regard to absences of applicants for adjustment of status under provisions of the LIFE Act, 8 C.F.R. § 245a.15(c)(1) states that an alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, 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 (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. Thus, the director's reference to 8 C.F.R. § 245a.1(g), which does not allow for single absences beyond 30 days, is erroneous and is hereby withdrawn.

Nevertheless, an alien applying for adjustment of status under provisions of the LIFE Act has the burden of proving by a preponderance of evidence that he or she has *continuously* resided in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988, is admissible to the United States under the provisions of section 212A of the Act, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.12(e). Thus, the burden is on the applicant to establish that the continuous nature of his residence was not compromised by his 1987 absence. The director concluded that, by claiming that he returned in September of 1987 rather in October of 1987, as the case was, the applicant willfully misrepresented that his absence was less than 30 days so that his claim of continuous residence would not be compromised. However, as previously stated, the director incorrectly applied the provisions of 8 C.F.R. § 245a.1(g) rather than 8 C.F.R. § 245a.15(c)(1), which are applicable in the present matter. While the record is unclear as to the actual length of the applicant's absence, it is not readily apparent that such absence was prolonged beyond the allowed 45 days. Therefore, the AAO cannot affirm the director's finding of willful misrepresentation.

That being said, the burden of proving that the absence was within the allowed time period is on the applicant. See 8 C.F.R. § 245a.12(e). If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being." In the present matter, Citizenship and Immigration Services (CIS) has obtained information determining that applicant returned to the United States on October 2, 1987. Therefore, if the applicant departed the United States prior to August 18, 1987, his absence would have exceeded the allowed 45 days. As the applicant has not established the exact date of his departure from the United States in August of 1987, CIS cannot determine that the applicant was absent from the United States for 45 days or less. As such, even though the AAO withdraws the director's finding of

willful misrepresentation, the lack of evidence establishing that the applicant departed the United States after August 18, 1987 leads the AAO to affirm the conclusion that the applicant failed to meet his burden of establishing continuous residence in the United States during the requisite time period.

Additionally, the director questioned the reliability of certain evidence submitted by the applicant in support of his claim. While the director conceded that the applicant submitted sufficient evidence establishing his residence in the United States from 1981 through early 1984, she found that the applicant failed to submit sufficient credible evidence to establish his physical presence in the United States after early 1984 and, more specifically, on November 6, 1986 and on May 1, 1987.

On appeal, counsel disputes the director's conclusion that the applicant willfully misrepresented facts pertaining to his 1987 absence and asserts that the director is legally barred from bringing forth a ground for denial that was not previously introduced in the notice of intent to deny (NOID).

While the AAO has withdrawn the director's finding of willful misrepresentation, it is noted that counsel's argument is without merit. The record clearly shows that the director first issued a finding of willful misrepresentation in the first denial notice dated November 15, 2005, which the applicant received and appealed. Thus, by virtue of having had the opportunity to review the initial denial, counsel was put on notice of the director's finding. Moreover, even if the director had committed a procedural error by not including her intended finding in the earlier NOID, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence. Counsel's remaining arguments on appeal will be considered in a full discussion to follow.

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).

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.

Although CIS regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In the present matter, the applicant submitted the following evidence in an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988:

1. A two-year lease agreement for a term that commenced on March 1, 1981 and continued to February 28, 1983. The applicant was identified as the tenant of the lease.
2. An affidavit dated October 11, 2005 from [REDACTED] claiming that the applicant sought [REDACTED] legal advice regarding a business venture in May of 1986. [REDACTED] stated that the applicant ultimately acquired an interest in a business venture in the year 2000.
3. A purchase receipt dated September 24, 1981 identifying the applicant as the customer.
4. A sworn statement dated March 3, 2005 from [REDACTED]. The statement included the applicant's most recent U.S. residential address and attestations from the affiant that he has known the applicant since November 1981. The affiant provided no verifiable information regarding his initial acquaintance with the applicant, nor did he provide any details to establish the basis for his knowledge regarding the applicant's residence in the United States during the relevant statutory time period.
5. Bank receipts dated May 19, 1982 and January 25, 1984 showing the applicant as the bank customer requesting fund transfers to Pakistan in the amount of \$500 each.
6. An affidavit dated October 5, 2005 from [REDACTED]. [REDACTED] provided the applicant's most recent U.S. residential address and claimed to have been good friends with the applicant since December 1982. He further provided the applicant's first U.S. residential address, claiming that he lived there with the applicant for two weeks. He also stated that at that time, the applicant worked at Subash Sandwich Shop.
7. An undated affidavit from [REDACTED] claiming that the applicant worked at the Subash Sandwich Shop from March 1981 to July 1984. Although [REDACTED] stated that the applicant used to live at 107 Brighton 11th St., he did not provide the dates of the applicant's residence at that address.
8. Affidavit dated May 25, 1990 from [REDACTED] claiming to have been friends with the applicant since June 1981. The affiant further claimed that the applicant departed the United States in August of 1987 and returned in September of 1987.
9. A notarized employment letter dated May 22, 1990 from the owner of the Subash Sandwich Corporation. The business owner stated that he employed the applicant from March 15, 1981 to July 18, 1984.

10. A notarized employment letter dated May 22, 1990 from the owner of the Sea Line Grocery. The business owner stated that he employed the applicant as a cashier at his store from July 25, 1984 to October 30, 1988.
11. A notarized employment letter dated May 22, 1990 from the owner of S.T.Z. Grocery. The business owner stated that he employed the applicant as a cashier at his store from November 6, 1988 to January 25, 1990.
12. A letter dated July 30, 2001 from the secretary at the Muslim Community Center in Brooklyn, New York, claiming that the applicant attended the facility. Although the letter states that the applicant has attended the facility since 1981, the date was clearly altered.

After reviewing the submitted documentation, the director determined that the applicant failed to establish eligibility. While the director conceded that sufficient documentation was provided to establish the applicant's residence in the United States from 1981 to early 1984, she properly determined that the applicant failed to establish his continuous residence in the United States during the remainder of the statutory period. Following the dicta set forth in *Matter of E-M-*, the applicant may rely on affidavits to support his claim if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. See *Matter of E-M-*, 20 I&N Dec. 77. However, this applicant's documentation falls short of these criteria.

First, as accurately noted by the director, the affiant in No. 2 made no claim to having personally met with the applicant in May 1986, despite having purportedly consulted the applicant on various business matters. As such, the affiant has not established a basis for knowing of the applicant's alleged continuous residence in the United States post early 1984. Second, while the affiant in No. 4 above claimed to have known the applicant since November 1981, he provided no verifiable information to establish a basis for his claim. Third, while the affiant in No. 6 above claimed to have known the applicant since December 1982, the only verifiable information he provided to establish a basis for his knowledge was the applicant's address and place of employment prior to early 1984. The affiant provided no verifiable information to establish his knowledge of the applicant's residence in the United States during the portion of the statutory period that is currently in question. The affiant in No. 7 above also provided verifiable information pertaining only to the time period prior to July 1984, a time period which is not disputed in this proceeding. Similar to the affiant in No. 6 above, the affiant in No. 7 above provided no verifiable information with regard to the applicant's purported residence in the United States after July 1984. Fourth, with regard to the attestations in No. 8 above, while the affiant claimed to have known of the applicant's residence in the United States since June 1981, his credibility is suspect in light of his subsequent claim—namely, that the applicant's absence from the United States was from August to September 1987. Pursuant to information subsequently discovered by CIS with regard to the actual date of the applicant's return, the fact that the affiant's claim is inconsistent with such information suggests, at the very least, that his statements are unreliable. Fifth, a review of the letter in No. 12 indicates that the claimed date that the applicant commenced his attendance of the religious institution was altered. There is no evidence or further documentation to explain who altered the date or why it was altered in the first place. As such, the AAO must question not only the reliability of the information provided in the letter, but to further question the applicant's credibility by virtue of having submitted a document that has been obviously altered. See *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Next, with regard to past employment records, 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers must be on employer letterhead stationery, if the employer has such stationery, and must include: (1) alien's address at the time of employment; (2) exact period of employment; (3) periods of layoff; (4) duties with the company; (5)

whether or not the information was taken from official company records; and (6) where records are located and whether CIS may have access to them. In the present matter, the employment letters submitted by the applicant also fall short of the prescribed criteria. Specifically, neither of the applicant's purported employers, whose statements are detailed in Nos. 9 and 10 above, included the applicant's address at the time of each respective job or discussed the availability of official company employment records.

Lastly, while the AAO determined that the record lacked sufficient evidence to support a finding of material misrepresentation, the record nevertheless shows that the applicant failed to disclose the relevant facts with regard to his 1987 absence from the United States. The director made further adverse findings with regard to the credibility of the applicant's claim in the NOID that was issued on September 17, 2005. Specifically, the director discussed the altered document from the Muslim Community Center of Brooklyn and the employment letters described in Nos. 9 and 10 above. However, counsel's sole focus in the appellate brief was the director's finding of material misrepresentation, which the AAO has withdrawn in the present decision. Counsel fails to address any of the adverse findings that further undermine the applicant's claim and overall credibility. Thus, despite the AAO's withdrawal of the director's most recent finding of material representation as it pertains to the applicant's 1987 departure from and subsequent return to the United States, the considerable deficiencies in the applicant's supporting evidence have not been addressed by independent objective evidence. *See Matter of Ho*, 19 I&N Dec. at 591-92.

Because of these unresolved inconsistencies, the applicant has failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. Given this, he is 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.