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U.S. Citizenship
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Services

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[Redacted]

FILE:

[Redacted]

Office: SACRAMENTO

Date: SEP 06 2007

MSC 02 050 64669

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:

[Redacted]

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. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 District Director, San Francisco, California, 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 from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel argues the director did not apply the correct evidentiary standard in evaluating the documents submitted. Counsel argues the applicant was not given adequate opportunity to rebut all the evidence mentioned in the Notice of Intent to Deny.

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 applicant 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 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.

Although the 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. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

Here, the submitted evidence is not relevant, probative, and credible. In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant only provided a notarized affidavit from [REDACTED] of Chicago, Illinois, who attested to the applicant's absence from the

United States from June 15, 1987 to July 15, 1987 and a notarized affidavit from Sultan Mahmood of Chicago, Illinois, who indicated that he has known the applicant since 1981.

At the time of his LIFE interview on October 28, 2003, the applicant under oath, admitted in a signed statement that he entered the United States in March 1981, resided in Chicago, Illinois from March 1981 to June 1987 and was employed at a pizza shop while residing in Chicago. The applicant admitted he informed the individual who assisted in preparing his Form I-687 application that he had worked on a farm in Lodi, California in 1988, returned to Chicago in 1989, and have resided in Lodi since 1990. The applicant admitted that the information on the Form I-687 application was false even though he signed the application as being true and correct. When asked why he signed the application if the information was incorrect, the applicant replied, "I do not understand English." It is noted that although the Form I-687 application, at item 50, requests the name and address of the person preparing the form, it was left blank.

On September 18, 2003, a Form G-56 was issued that advised the applicant of his scheduled appointment on October 28, 2003. The applicant was requested to bring evidence of his entry into the United States prior to January 1, 1982 and of his continuous residence during the requisite period. The applicant, however, failed to provide the requested evidence.

On February 18, 2004, the director issued a Notice of Intent to Deny, which advised the applicant of the contents of his sworn statement, his failure to submit on October 28, 2003, evidence of his entry into the United States prior to January 1, 1982 and evidence of his continuous residence during the requisite period.

The applicant, in response, submitted:

- An undated letter signed by an individual who claimed to be the property manager of Khan & Associates in Chicago, Illinois, who indicated the applicant was a tenant at [REDACTED] Chicago, Illinois from January 1987 to June 12, 1987.
- An notarized affidavit from Iman minister, [REDACTED] of Stockton, California, who indicated he met the applicant at the [REDACTED] the applicant attended from January 20, 1988 to April 26, 2000.
- An envelope postmarked September 25, 1985 addressed to the applicant at [REDACTED]
- Copies of his children's October 12, 1981 and April 18, 1988 birth certificates who were born in Pakistan.

Regarding the letter from [REDACTED] counsel indicated the applicant attended the mosque during the time he was visiting Stockton in 1988. Regarding the inconsistencies between the applicant's Form I-687 and his sworn testimony, counsel indicated, in part:

It would be inappropriate to characterize this difference as a misrepresentation or as a reason to impugn his credibility. First, the interview of October 29, 2003, was the first time he had the formal opportunity to testify to all statements on the I-687. In all my experience with the Service, an applicant has always had the opportunity to correct the written application during the testimony phase. This should be particularly true here where the application was prepared many years ago with the aid of a friend or consultant who was interpreting for the applicant. The applicant did not and does not read in English.

Furthermore, the applicant did spend some occasional periods in Lodi, visiting friends even while he lived primarily in Chicago. It is understandable how the consultant may have listed

Lodi as the residence for simplicity purposes. Surely, that was not the correct thing to do, but it is understandable. The applicant did not have the knowledge to correct the mistake at that time.

The director, in his decision, noted that Citizenship and Immigration Services was unable to verify the authenticity of the undated letter made by the property manager of Khan & Associates as the telephone number listed was not in service. The director further noted that [REDACTED] had verified that the applicant had prayed at the Lodi mosque from December 1987 to April 2000. The applicant was advised that except for the postmarked envelope, he had failed to provide credible evidence to establish his claim of residence in Chicago during the requisite period.

On appeal, counsel asserts that if "we" were given the chance to respond to the fact the telephone number listed on the letterhead from Khan & Associates was disconnected, "we could have investigated and attempted to discover the current whereabouts of the declarant. Surely, [the applicant] is not responsible for the Khan firm's changing telephone numbers or having gone out of business." To date, however, counsel has neither provided a telephone number for this entity or evidence that the entity is out of business.

The statements of counsel regarding the amount and sufficiency of the evidence of residence and the inability to produce additional evidence of residence due to the result of the passage of time have been considered. However, the evidence submitted does not establish with reasonable probability that the applicant was already in the country before January 1, 1982 and that he was residing in continuously unlawful status through May 4, 1988. The postmarked envelope and counsel's statements must be weighed in conjunction with all the evidence in the file, which only includes:

1. affidavits from [REDACTED] and [REDACTED] that failed to provide an address where the applicant resided during the period in question and any details regarding the nature or origin of their relationships with the applicant or the basis for their continuing awareness of the applicant's residence;
2. an affidavit from Iman minister, [REDACTED] who indicated the applicant attended Lodi mosque commencing in January 20, 1988; and
3. the letter from Khan & Associates that attested to the applicant's residence in Chicago from January 1987 to June 12, 1987.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Based on the evidence in this case, the AAO determines that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

Finally, the record contains a FBI report dated September 27, 2003, which reflects on July 7, 1992, the applicant was arrested by the Lodi Police Department for battery on police officer/emergency personnel and obstruct/resist a public officer. The charges, however, were dismissed by the district attorney.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.