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**U.S. Citizenship
and Immigration
Services**

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FILE: 
MSC 02 052 61999

Office: NEW YORK Date:

MAY 05

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 District Director, New York, 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 failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988. Specifically, the director found that because the applicant stated he first entered the United States in 1987, had three children born in Pakistan during the relevant period and because he provided inconsistent statements under oath, the applicant was ineligible for the benefit sought.

On appeal, counsel asserts that the director failed to consider all of the evidence submitted by the applicant as required by 8 C.F.R. § 245a.12(f). In addition, counsel contends that the applicant's claimed date of first entry was misinterpreted by the Service, and that the applicant actually entered the United States in March of 1981. Finally, counsel submits a document in support of the contention that the applicant's three children, born in Pakistan during the relevant period, were actually adopted by the applicant in 1990.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 or 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).

On Form I-687, Application for Status as a Temporary Resident, which he signed under penalty of perjury on June 21, 1993, the applicant claims that he first entered the United States on March 10, 1981, when he crossed the border without inspection. In addition, the applicant claimed in section 33 of this form that he resided at the following addresses in Brooklyn during the relevant period:

March 1981 to July 1983:
August 1983 to June 1985:
July 1985 to September 1990:



On section 36 of the form, he claimed to work for the following employers during the relevant period:

1982 to 1985:	Flea Market
1986 to June 1987:	Applied Sugar Laboratories, Inc.
September 1987 to date:	Azee Cont. Co.

In support of his eligibility, the applicant furnished the following documentary evidence:

1. Affidavit dated October 26, 2001 by [REDACTED] claiming that he first met the applicant in March 1981. Later in the affidavit he claims that he has known the applicant from his childhood in Pakistan. He claims that in March 1981 he met the applicant in New York, who began living in the affiant's neighborhood in Brooklyn.
2. Affidavit dated October 26, 2001 by [REDACTED], claiming that he first met the applicant in March 1981. Later in the affidavit he also claims that he has known the applicant from his childhood in Pakistan, and claims that he met the applicant again in New York in March 1981 and that he currently lives in his neighborhood.
3. Affidavit dated March 16, 1994 by [REDACTED], Canadian resident, claiming that the applicant came to New York on March 10, 1981. The affiant claims he knows this because the applicant called him from New York upon his arrival. He further claims that the applicant came to Canada on July 5, 1987 and stayed with the applicant's cousin, [REDACTED], a friend of the affiant. He claims that he invited the applicant to stay at his house during his visit, and that the applicant stayed with him from July 24 to July 26. He concludes by stating that the applicant departed Canada for New York on July 26, 1987 and that he drove the applicant to the border.
4. Affidavit dated May 28, 1993 by [REDACTED] cousin of the applicant, who claims that the applicant stayed with him in Canada from July 5, 1987 to July 26, 1987.

5. Affidavit dated June 21, 1993 by [REDACTED] claiming that he has known the applicant to reside at four different addresses in Brooklyn since March 1981. He lists the same addresses and time periods as the applicant lists on Form I-687.
6. Affidavit dated June 21, 1993 by [REDACTED] also claiming that he has known the applicant to reside at four different addresses in Brooklyn since March 1981. He lists the same addresses and time periods as the applicant lists on Form I-687.
7. Affidavit dated June 20, 1993 by [REDACTED] also claiming that he has known the applicant to reside at four different addresses in Brooklyn since March 1981. He lists the same addresses and time periods as the applicant lists on Form I-687.
8. Handwritten letter dated June 15, 1988 from [REDACTED] [illegible], President of Applied Sugar Laboratories, Inc., claiming that the applicant was an employee of the company from 1986 to June 1987.
9. Letter dated June 8, 1993 from [REDACTED], President of Aay-Zee Contracting Co., claiming that the applicant worked for the company as a helper since September 1987.

Upon review of the documentary evidence, the AAO finds that the applicant has not met his burden of proof. The AAO will begin with the employment letters. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant submitted a handwritten and somewhat illegible letter dated June 15, 1988 from Mr. [REDACTED] [illegible], President of Applied Sugar Laboratories, Inc., claiming that the applicant was an employee of the company from 1986 to June 1987. In addition, the applicant submitted a letter dated June 8, 1993 from [REDACTED], President of Aay-Zee Contracting Co., claiming that the applicant worked for the company as a helper since September 1987. Both letters failed to provide the applicant's address at the time of employment, show periods of layoff, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable as required under 8 C.F.R. § 245a.2(d)(3)(i).

Neither of these letters provided the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiants also failed to declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. In fact, it appears that the letters were not written or provided by the actual employer. The

applicant's inability to obtain authentic letters of employment seriously detracts from the credibility of his claim of continuous unlawful residence during the requisite period.

The applicant submitted seven affidavits, most of which are completed on the same citizen/resident affidavit form and provide very similar information. The applicant submitted sworn affidavits by [REDACTED] and [REDACTED] who stated that they have known the applicant since 1981 and that the applicant has been a continuous resident of the United States since that time. They provided their address, as well as the applicant's current address and his previous addresses.

The applicant also submitted two affidavits by [REDACTED] and [REDACTED] which stated that the applicant visited Canada in July 1987. Both affiants provided their addresses, but included minimal information pertaining to the applicant.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. None of the affiants indicated how they dated their acquaintance with the applicant, how they met the applicant in the United States or how frequently they saw the applicant. In fact, several of the affidavits contain identical information, including the same typographical errors. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. 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 applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

In the Notice of Intent to Deny (NOID) issued on July 18, 2006, the director did not discuss this evidence, but instead addressed the following issues. First, the director noted that in his April 6, 2006 interview, the applicant claimed, under oath, that his first entry to the United States was on March 10, 1987, and that he did not depart the United States until 2001. In addition, the director noted that the applicant claimed to have three children born in Pakistan during the times he claimed to be present in the United States: [REDACTED], born September 10, 1984; [REDACTED], born April 16, 1987, and [REDACTED], born September 10, 1989. The director granted the applicant thirty (30) days to submit additional evidence. The record reflects that no additional evidence was received. In the Notice of Decision, dated December 17, 2004, the director denied the instant applicant based on the reasons stated in the NOID.

The first issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. The applicant submitted letters of employment and affidavits as evidence to support his Form I-485 application. Here, for the reasons set forth above, the applicant has failed to meet this burden.

On appeal, the applicant attempts to overcome the director's additional bases for denial. In support of his presence in the United States prior to January 1, 1982, the applicant submits an affidavit (whose

notarization is questionable), stating that he first entered the United States in March 1981. No additional evidence is submitted to support this claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In response to the director's issue regarding the birth of his children abroad, the applicant submits a document entitled "Agreement of Adoption Deed" dated September 17, 1990. Based on this document, the applicant claims that the children were adopted in 1990, and not born to his wife in the 1980's as contended by the director. The applicant concludes that this document overcomes the director's basis for the denial. The AAO disagrees.

If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). In this matter, it is highly doubtful that the applicant, who claims to have resided in the United States since 1981 with no trips out of the United States (aside from his Canadian trip in July 1987) prior to 2001 would feasibly have adopted three children in Pakistan. It is unlikely that an adoption would be approved with one of the alleged adoptive parents absent from the country at the time of the document's execution. This document alone, in consideration of the other inconsistencies in the record and the applicant's failure to provide sufficient evidence, is not credible evidence and raises additional questions with regard to the legitimacy of the applicant's claims. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of 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).

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence 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.