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U.S. Citizenship
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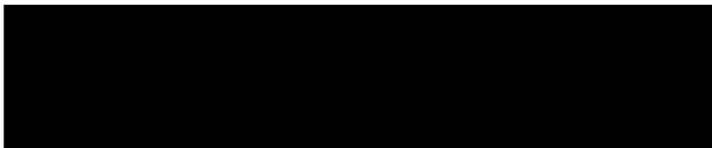
LC

FILE: [REDACTED] Office: NEW YORK Date: **MAY 30 2008**
MSC 02 127 63673

IN RE: Applicant: [REDACTED]

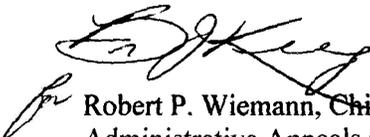
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.


for 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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director decided that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. This decision was based on the district director's determination that the applicant had exceeded the forty-five (45) day limit for a single absence from the United States during this period.

On appeal, counsel asserts that the director did not make any attempts to contact the individuals who provided their new addresses and telephone numbers in response to the Notice of Intent to Deny. Counsel argues that the decision was issued in an unfair and unjustified manner by ignoring the applicant's response and overlooking highly credible supporting documents.

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. Section 1104(c)(2)(B)(i) of the LIFE Act; 8 C.F.R. § 245a.11(b).

"Continuous residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

Continuous residence. An alien shall be regarded as having resided continuously in the United States if:

- (1) 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, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed. [Emphasis added.]

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).

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

- A notarized affidavit from [REDACTED] of Chicago, Illinois, who attested to the applicant’s residence in the United States since 1981 and to his departure from the United States from July 15, 1987, to September 21, 1987.
- A notarized affidavit from [REDACTED] of Morton Grove, Illinois, who indicated that he has been acquainted with the applicant since July 1982 and has remained in contact with the applicant since that time.
- A letter dated January 16, 2004, from [REDACTED] Imam of The Islamic Congress, Inc., in Astoria, New York, who attested to the applicant’s current residence in Astoria, New York and indicated that the applicant has been a member of the community since 1984.
- A notarized affidavit from [REDACTED] of Chicago, Illinois, who indicated that he has been acquainted with the applicant since August 1981. The affiant asserted that he resided in Chicago until 1990 and “during this period of time he remained a close family friend to me and I often met him on Friday prayers in the Mosque.”

The applicant indicated on his Form I-687 application and in an affidavit, both signed on April 4, 1990, and at the time of his LIFE interview that he departed the United States on July 15, 1987, to see his mother in Pakistan and returned on September 21, 1987.

On October 20, 2006, the director issued a Notice of Intent to Deny, which advised the applicant that the letter from The Islamic Congress, Inc. and the affidavits were determined to be unverifiable. The telephone number listed on the letter was disconnected and the New York Department of State Division of Corporations was unable to verify its existence. The telephone numbers listed on [REDACTED]’s affidavit were also disconnected and no one answered the telephone number provided by [REDACTED]. The remaining documents had no relevance as the affiants attested to the applicant’s residence and employment subsequent to the requisite period. The applicant was also advised that his absence from July 15, 1987, to September 21, 1987, had exceeded the 45-day limit for a single absence during the requisite period.

The applicant, in response, submitted:

- An additional affidavit from [REDACTED] who reaffirmed the veracity of his previous affidavit. The affiant provided current telephone numbers and apologized for any inconvenience that the director may have occurred in her attempt to contact him.
- An additional affidavit from [REDACTED] who reaffirmed the veracity of his previous affidavit. The affiant provided his current address and telephone numbers and apologized for any inconvenience that the director may have occurred in her attempt to contact him.

- An additional letter from [REDACTED], Imam of Masjid Al-Ikhlās, who indicated that The Islamic Congress, Inc. is a registered religious not-for-profit organization, and provided a copy its Certificate of Incorporation, which was originally certified by the State of New York, County of Queens, on August 2, 1976. The affiant also indicated that the telephone number listed on the initial letter had been disconnected for some time due to on-going construction at the location for the past few years. The affiant indicated that, at present, there is telephone service, “but there is not someone there at all times to answer the phone.”

The applicant did not address the issue regarding his absence in 1987 that exceeded the 45-day limit for a single absence during the requisite period.

The director, in denying the application, noted that the documents submitted in response to the Notice of Intent to Deny were insufficient to overcome the grounds for denial as the applicant had exceeded the 45-day limit for a single absence during the requisite period and, therefore, interrupted his continuous residence and physical presence requirements.

The basis for the denial of this application was *not* a failure to establish qualifying residence and physical presence during the requisite period. Rather, it was the applicant’s failure to establish *continuous* residence during the requisite period due to his absence, which exceeded the 45-day limit for a single absence, from the United States. Counsel does not address the applicant’s absence on appeal.

It is not necessary for the applicant to provide an *emergent reason* for physical presence as the regulation at 8 C.F.R. § 245a.16(b) does not require it. If the applicant’s absence had exceeded 45 days, his absence would be examined utilizing the standard set forth in 8 C.F.R. § 245a.15(c)(1). While not dealt with in the district director’s decision, there must, nevertheless, be a determination as to whether the applicant’s prolonged absence from the United States was due to an “emergent reason” that would interrupt his continuous residence. 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 other words, the reason must be unexpected at the time of departure from the United States and of sufficient magnitude that it made the applicant’s return to the United States more than inconvenient, but virtually impossible. However, in the instant case, that was not the situation. There is no evidence to indicate that an emergent reason delayed the applicant’s return to the United States within the 45-day period. The applicant’s prolonged absences would appear to have been a matter of personal choice, not a situation that was forced upon his by unexpected events.

The applicant’s absence from July 15, 1987, to September 21, 1987, exceeded the 45-day period allowable for a single absence, and interrupted his “continuous residence” in the United States. The applicant has, therefore, failed to establish that he resided in the United States in a continuously unlawful status from before January 1, 1982 through May 4, 1988, as required by the statute, section 1104(c)(2)(B)(i) of the LIFE Act, and the regulation, 8 C.F.R. §§ 245a.11(b) and 245a.15(c)(1).

Accordingly, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also, Janka v. U.S. Dept. of*

Transp., NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Item 32 of the Form I-687 application and part B of the Form I-485 application requested the applicant to list the dates of birth (month, day and year) of his spouse and children. The applicant, however, only listed the year of their births. Furthermore, the applicant, on his Form I-687 application, listed his children's years of birth as 1980, 1981, and 1987; however, on his Form I-485 application, he amended his last child's date of birth to reflect June 1988.

The applicant's failure to disclose the full dates of birth of his children is a strong indication that he was either not in the United States prior to January 1, 1982, or may have been outside the United States longer than what he indicated on his application.

In his affidavit, [REDACTED] indicated that he knows from personal knowledge that the applicant has been residing in the United State since 1981, but he failed to state the applicant's place of residence, provide any details regarding the nature of his relationship with the applicant or the basis for his continuing awareness of the applicant's residence.

The initial letter from [REDACTED] raises questions to its authenticity as the applicant claimed on his Form I-687 application to have resided in Chicago, Illinois, and that he was *not* affiliated with any religious organization during the requisite period. The letter also does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v), and the affiant does not explain the origin of the information to which he attests.

These factors raise significant issue to the legitimacy of the applicant's residence during the requisite period, and raise questions about the authenticity of the remaining two affidavits the applicant has presented in an attempt to establish continuous residence in the United States prior to January 1, 1982, through May 4, 1988.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

Given the credibility issues arising from the documentation provided by the applicant, it is determined 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 from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant 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.