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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: NOV 06 2008

MSC 02 233 61013

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. If your appeal was dismissed or rejected, all documents have been returned to the New York District Office. 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 director in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through May 4, 1988.

On appeal counsel asserts that the director did not give proper weight to the documentation submitted by the applicant, which establishes his continuous residence in the United States during the requisite period for LIFE legalization.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1), as follows: "An alien shall be regarded as having resided continuously in the United States if *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." (Emphases 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 its amenability to verification. *See* 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).

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, who was born in Pakistan on February 2, 1966 and claims to have resided in the United States since the spring of 1981, filed his application for permanent resident status under the LIFE Act (Form I-485) on May 21, 2002. At that time the record included the following evidence of the applicant's residence and physical presence in the United States during the 1980s, which had been filed along with a Form I-687 (application for temporary resident status) and an Affidavit for Determination of Class Membership in League of United Latin American Citizens [LULAC] v. INS (a legalization class action lawsuit) in July 1992:

- An undated statement by a resident of Astoria, New York, that the applicant lived with him in Astoria from January 1981 to March 1985, paying rent of $150/month.

- An undated statement by a resident of Brooklyn, New York, that the applicant lived with him in Brooklyn from April 1985 to November 1991, paying rent of $180/month.

- A letter from , president of A & B Construction, Inc. of Brooklyn, dated "1-6-92," stating that the applicant was employed by his company from May 1981 to January 1985 as a "helper" and was paid $3.50/hour.

  A letter from , a partner in Trice Restoration, Inc. of Astoria, New York, also dated "1-6-92," stating that the applicant was employed by his company from March 1985 to October 1991 as a "helper" and was paid $4.00/hour.

At his interview for LIFE legalization, on April 20, 2004, the applicant submitted an additional statement from , a resident of Kansas City, Missouri, indicating that he met the

applicant in 1981 and visited him during the years the applicant resided in Astoria, Queens, and Brooklyn, New York.

On July 7, 2007 the director issued a Notice of Intent to Deny (NOID), indicating that the evidence of record was insufficient to establish the applicant's continuous residence in the United States during the requisite period for LIFE legalization. The director granted the applicant 30 days to submit additional evidence.

In response to the NOID the applicant submitted statements from three additional persons concerning the applicant's claimed residence in the United States during the 1980s. They included the following:

- A notarized statement by, a resident of Long Island City, New York, dated July 25, 2007, that he has been friends with the applicant since 1981, when he resided in Astoria, Queens, and that they used to gather at Nicosia Service Center Inc. in Long Island City.

- A notarized statement b a resident of Paramus, New Jersey, dated July 28, 2007, that he has known the applicant since 1981 and that the applicant used to come to his Oriental rug store located in New York City.

- A notarized statement by, a resident of Brooklyn, dated July 31, 2007, that he has known the applicant since 1981

On October 19, 2006 the director issued a Notice of Decision denying the application. The director indicated that the "affidavit" evidence was insufficient to establish the applicant's continuous unlawful residence in the United States from the spring of 1981 through May 4, 1988, and that the information provided by the applicant regarding his absence(s) from the United States during the 1980s was conflicting.

On appeal counsel offers an explanation for the conflicting information about the applicant's absence(s) from the United States and asserts that the previously submitted statements from the applicant's acquaintances, supplemented by the applicant's own affidavit on appeal, establishes his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as required for LIFE legalization.

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).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States in continuous unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite time period for LIFE legalization. For someone claiming to have lived in the United States since the spring of 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary or secondary evidence – such as school reports, medical records, and earnings statements or tax records from the jobs he claims to have had – during the following seven years through May 4, 1988.

The statements from the seven individuals – ranging in time from 1992 to 2007 – who claim to have lived with or otherwise known the applicant during the 1980s all have minimalist or fill-in-the-blank formats, some with identical language, with very little input from the authors. Considering how long they claim to have known the applicant, the authors provide few details about how they met him and the nature and extent of their interaction with the applicant over the years. confirmed by telephone that the applicant worked in his Oriental rug store after school in 1980 and 1981 (though the applicant does not claim to have been in the United States as early as 1980), but provided no further information about the applicant after 1981. confirmed by telephone that he met the applicant in 1981, but provided no further information about the applicant thereafter, and confirmed by telephone that he met the applicant in 1985, but he obviously did not know the applicant before that. In sum, the statements in the record are all remarkably thin on substance, and provide almost no information about the applicant's life in the United States during the 1980s. Finally, the statements are not supported by any documentary evidence – such as photographs, letters, and the like – demonstrating the authors' relationship with the applicant in New York during the 1980s. For the reasons discussed above, the AAO determines that the foregoing statements have limited probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the years 1981 to 1988.

As for the employment letters from and neither comports with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they did not provide the applicant's address during the periods of employment, did not state the applicant's duties except to describe him vaguely as a "helper," did not declare whether the information was taken from company records, and did not indicate whether such records are available for review. Furthermore, the applicant has not submitted any earnings statements or tax records to demonstrate that he was actually employed by either company. The AAO determines that the employment letters have limited probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the years 1981 to 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as

required under section 1104(c)(2)(B)(i) of the LIFE Act. Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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