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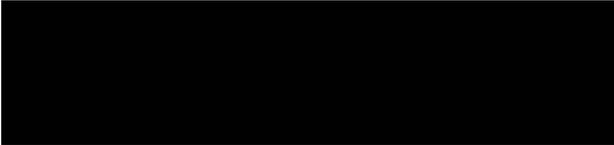
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
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U.S. Citizenship  
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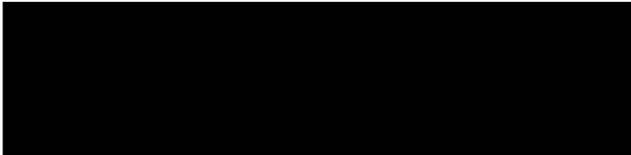
Office: NEW YORK CITY

Date: OCT 10 2008

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 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 United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel asserts that the documentation submitted by the applicant in support of his claim is sufficient to establish that the applicant has continuously resided in the United States from before January 1, 1982 through May 4, 1988.

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.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(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 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, a native of Pakistan who claims to have lived in the United States since June 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on October 17, 2001. With his application and at a subsequent interview on February 10, 2004, the applicant submitted the following documents, one of which dated back to 1990, as evidence of his residence in the United States during the years 1981-1988:

An affidavit from [REDACTED], dated April 3, 1990, stating that he knew that the applicant traveled to Pakistan around June 1987 and returned to the United States around July 1987.

A letter from [REDACTED], the imam of Masjid Ur Rashid, Inc. Islamic Teaching Center of Beacon, New York, dated June 18, 2001, stating that the applicant has been an active religious member of the center since 1982, that he attends prayer services regularly and participates in religious classes and work projects.

- A letter from [REDACTED], a resident of Beacon, New York, dated June 20, 2001, stating that he has known the applicant since 1982, that they are members of the

same religious community, and that they spent time together at religious services and other projects.

- A letter from [REDACTED], a resident of Washingtonville, New York, dated June 19, 2001, stating that he has known the applicant since 1982, and that they both worshiped at the same mosque.
- A letter from [REDACTED], a resident of Beacon, New York, dated June 19, 2001, stating that he and his family had known the applicant for the past eighteen years, that the applicant had served him and his family as a businessman many times, and that the applicant had contributed to community projects over the years for children.

Another letter from [REDACTED] in his capacity as imam of Masjid Ur Rashid, Inc. Islamic Teaching Center of Beacon, New York, dated January 29, 2004, stating that the applicant is an active religious member of the Islamic Center, that the applicant has been a member of the community since 1982, and that he attends prayer services, religious classes and work projects.

A letter from [REDACTED] and [REDACTED] residents of Beacon, New York, dated January 29, 2004, stating that they have known the applicant for over eighteen years, that the applicant is a businessman in Beacon, and had served them and their family.

A dependency certificate from [REDACTED], a resident of Swat, Pakistan, dated January 30, 2004, stating that he is the applicant's father-in-law, that the applicant's wife traveled to the United States on January 6, 1984 and was repatriated to Pakistan in November 1984, that the applicant has three children, one born on February 11, 1985, and that the applicant's wife and children are all under his care.

An affidavit from [REDACTED] on the letterhead of Kennedy Fried Chicken in Newburg, New York, dated February 8, 2004, stating that he had known the applicant since 1987, and that they are good friends.

Two letter envelopes from individuals in Pakistan, addressed to the applicant at [REDACTED], Bronx, New York, with postmark dates of September 15 and 16, 1982, and November 3, 1984.

In a Notice of Intent to Deny (NOID), dated August 25, 2006, the director, indicated that the applicant had not provided sufficient credible evidence to establish that he resided continuously in the United States from before January 1, 1982, through May 4, 1988. The director noted inconsistencies between the applicant's testimony at his LIFE Legalization interviews on October 24, 2005 and February 28, 2006 and other evidence in the record. The director

concluded that the inconsistencies undermined the veracity of the applicant's testimony that he has resided in the United States continuously in an unlawful status from before January 1, 1982 through May 4, 1988. The applicant was given 30 days to submit additional evidence.

In response, the applicant submitted a personal affidavit in which he offered explanations for some of the evidentiary inconsistencies cited in the NOID. The applicant also submitted copies of two earnings statements from Sizzler International Inc. dated in 1991 and 1992, which are outside the statutory period applicable for LIFE Legalization.

On November 28, 2006, the director issued a Notice of Decision denying the application. The director found that the documents submitted in response to the NOID and the other evidence of record was insufficient to overcome the grounds for denial. The director concluded that the evidence failed to establish that the applicant entered the United States before January 1, 1982 and thereafter resided continuously in the United States in an unlawful status through May 4, 1988, as required for legalization under the LIFE Act.

On appeal, counsel asserts that the documents submitted by the applicant are sufficient to establish that he has been residing in the United States from before January 1, 1982 through May 4, 1988. The applicant submitted copies of some documents that have been previously submitted, as well as a photocopied merchandise receipt.

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 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. The AAO determines that he has not.

The merchandise receipt, which was completed with handwritten notations, has no stamp or other official markings to authenticate the date it was written. The receipt does not identify the applicant's address. The year on the receipt appears to have been altered from 1991 to 1981. Given these substantive deficiencies and the appearance of fraud, the receipt is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The letter envelopes from individuals in Pakistan with postmark dates of September 15 and 16, 1982, and November 2, 1984, addressed to the applicant at [REDACTED], Bronx, New York, are clearly fraudulent because the stamps affixed to the envelopes were not issued by the

government of Pakistan in the 1980s. The stamps of [REDACTED] on the envelopes are part of a series of stamps first issued on September 11, 1994, and again from 1998-2001. Scott 2006 Standard Postage Stamp Catalogue, Vol. 5, pp. 22, 25.

Thus the letter envelopes have no probative value as evidence of the applicant's presence and residence in the United States during the 1980s. Moreover, these fraudulent submissions cast doubt on the credibility and reliability of other evidence in the record. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The letters from the imams of Masjid Ur Rashid, Inc. Islamic Teaching Center of Beacon, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The letters from [REDACTED], dated June 18, 2001, and [REDACTED], dated January 29, 2004, do not state where the applicant lived at any point in time between 1981 and 1988, do not indicate how and when they met the applicant, and do not state whether the information about the applicant's activities in the Islamic Center since 1982 was based on their personal knowledge, Islamic Center records, or hearsay. Since the letters do not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that they have little probative value. The letters are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The letters and affidavits from [REDACTED] and [REDACTED] have minimalist formats providing few details about the applicant's life in the United States and his interaction with the affiants over the years. None of the authors provided any information about where the applicant resided during the 1980s and what sort of work he did. Nor are the letters and affidavits accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. In addition, [REDACTED] did not state that he knew the applicant before 1987, and [REDACTED]

does not appear to have ever lived in the United States. In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 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, 8 U.S.C. § 245A(a)(2)(A). 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.