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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: AUG 01 2006

MSC 02 044 63272

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. 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, Los Angeles. The director certified the matter to the Administrative Appeals Office (AAO) for review. The AAO affirms the director's decision to deny the application.

The director concluded that 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. The director also determined that the applicant had engaged in terrorist activities as defined at section 212(a)(3)(B)(iv) of the Act and as such is inadmissible under section 212(a)(3)(B)(i)(I) of the Act. For both of these reasons, the director denied the application.

The applicant did not file a brief or other evidence with the AAO during the 33 days following the date of the director's June 26, 2006 denial.

To be eligible to adjust to permanent resident status under the LIFE Act, the applicant must establish that he is admissible to the United States as an immigrant. *See* section 1104(c)(2)(D)(i) of the LIFE Act.

Section 212(a)(3)(B) of the Immigration and Nationality Act (the Act) provides in relevant part:

> Terrorist activities. (i) In general. Any alien who—
> (I) has engaged in terrorist activity . . . is inadmissible.

Section 212(a)(3)(B)(iv) of the Act provides in relevant part:

> **Engage in terrorist activity defined. --** As used in this chapter, the term "engage in terrorist activity" means, in an individual capacity or as a member of an organization—
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> (IV) to solicit funds or other things of value for—
>
> (cc) a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization;
>
> (VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training—
>
> (dd) to a terrorist organization described in clause (vi)(III), or to any member of such an organization, unless the actor can demonstrate by clear and convincing evidence that the actor did not know, and

should not reasonably have known, that the organization was a terrorist organization.

Section 212(a)(3)(B)(vi) of the Act provides in relevant part:

> **Terrorist organization defined.** -- As used in clause (i)(VI) and clause (iv), the term "terrorist organization" means an organization—
>
> . . .
>
> (III) that is a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in, the activities described in subclauses (I) through (VI) of clause (iv).

The regulation at 8 C.F.R. § 245a.18(c)(2) states in relevant part:

> **Grounds of inadmissibility that may not be waived.** Notwithstanding any other provisions of the Act, the following provisions of section 212(a) of the Act may not be waived by the Attorney General under paragraph (c) of this section:
>
> . . .
>
> (v) Section 212(a)(3) (security and related grounds).

The regulation at 8 C.F.R. § 1003.1 states in relevant part:

> **Organization, jurisdiction, and powers of the Board of Immigration Appeals**
>
> (g) Decisions as precedents. Except as Board decisions may be modified or overruled by the Board or the Attorney General, decisions of the Board, and decisions of the Attorney General, shall be binding on all officers and employees of the Department of Homeland Security or immigration judges in the administration of the immigration laws of the United States.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must establish his or her continuous, unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act states:

> (i) In General – The alien must establish that he or she entered the United States before January 1, 1982, and 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.

(ii) Nonimmigrants – In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, such alien must establish that the period of authorized stay as a nonimmigrant expired before such date through the passage of time or that the alien's unlawful status was known to the Government as of such date.

The word "Government" means the United States Government. An alien who claims that his unlawful status was known to the Government as of January 1, 1982 must establish that, prior to January 1, 1982, documents existed in one or more government agencies so, when such documentation is taken as a whole, it would warrant a finding that the alien's status in the United States was known to the Government to be unlawful. *Matter of P-*, 19 I&N Dec. 823 (Comm. 1988).

Congress provided only two ways in which an applicant, who had been admitted as a nonimmigrant, could establish eligibility for permanent residence under the LIFE Act. The first was to demonstrate that his or her authorized period of stay expired prior to January 1, 1982. The second was to show that, even though the authorized stay had not expired as of January 1, 1982, the applicant was, nevertheless, in an unlawful status that was known to the Government as of that date. Thus, Congress acknowledged it was possible to fall out of lawful status during a period of authorized stay for various reasons, such as by working without authorization. However, to demonstrate eligibility, the LIFE Act also clearly states that the applicant's unlawful status in such a case must have been known to the Government as of January 1, 1982.

On January 4, 1990, the applicant applied for class membership in a legalization class-action lawsuit and submitted Form I-687, Application for Status as a Temporary Resident. On November 13, 2001, the applicant filed Form I-485, Application to Register Permanent Residence or Adjust Status, under section 1104 of the LIFE Act.

On July 27, 2004, the district director issued a notice of decision denying the LIFE application. The director indicated that the applicant had failed to establish continuous, unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988.

On appeal, counsel asserted that the director erred in not first issuing a notice of intent to deny (NOID) before issuing an adverse notice of decision. Counsel also asserted that the director erred in not addressing whether the applicant's claim on the Form I-687 that his F-1 nonimmigrant student status expired on December 15, 1980 was sufficient to demonstrate that his nonimmigrant status expired prior to the statutory period through the passage of time. Counsel also asserted that the director erred by not addressing whether the applicant's claim on his Form I-687 that he violated his nonimmigrant status and began working without authorization in August 1980 was sufficient to demonstrate that the applicant had violated his nonimmigrant status in a manner that was known to the Government prior to January 1, 1982.

The July 27, 2004 notice of decision was withdrawn. The AAO remanded the matter to the district office, instructing that office to comply with 8 C.F.R. § 245a.20(a)(2) and to first issue a NOID before issuing any adverse notice of decision.

On May 3, 2006, the district director issued a NOID. She concluded that the applicant had failed to establish continuous, unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988. The director indicated that a preponderance of the evidence established that the applicant's authorized stay as an F-1 nonimmigrant student began in December 1979 and continued through May 1986, when the applicant completed his bachelor's degree. She also concluded that the applicant was inadmissible under section 212(a)(3)(B)(i)(I) because he had engaged in terrorist activities.

In response to the NOID, counsel explained that he was awaiting response to a Freedom of Information Act (FOIA) request filed on behalf of his client on August 19, 2004. Counsel requested that the director hold the applicant's decision in abeyance until 60 days from the date of receipt of the FOIA response.

On June 26, 2006, the director denied the application based on the reasons set out in the NOID. The director pointed out in her denial that there was no statutory or regulatory basis for holding an adjudication in abeyance pending a response to a request filed pursuant to the FOIA. The director stated further that on July 26, 2005, the Service sent a request to the FOIA applicant. However, because the FOIA applicant failed to respond to that request within 45 days, the August 19, 2004 FOIA request had been closed. The director also informed the applicant that the district office would certify the matter to the AAO for review and would forward a copy of the record of proceedings to the applicant's counsel, simultaneously, with the issuance of the denial. The director explained to the applicant that he had 30 days from the date of the denial to submit a brief in support of his application to the AAO, if he wished to do so.

The applicant elected not to submit a brief or other evidence to the AAO after his case was certified to the AAO for review.

When the applicant first entered the United States on December 25, 1979, he was admitted as an F-1 nonimmigrant student with an authorized period of stay to continue as long as he maintained his status as an F-1 nonimmigrant student. The applicant's testimony, his school records and his prior applications submitted to the Service establish that he continued to study and to work toward his bachelor's degree until May 1986.

In addition, on the Form I-589, Application for Asylum and Withholding of Removal, dated October 1, 2004, the applicant acknowledged that his period of authorized stay as an F-1 nonimmigrant student continued through at least August 1983. On that application at Part 18(c), he indicated that on August 15, 1983, he was allowed entry into the United States at New York City as an F-1 nonimmigrant student. To corroborate this point, at Part 24 of his Form I-589 dated January 27, 1993, the applicant indicated that he was allowed a second entry into the United States on August 15, 1983.

On the Form I-687, the applicant failed to list any absences from the United States or re-entries into this country between December 25, 1979 and December 29, 1989, the date on which he signed the Form I-687. However, the record makes clear that the applicant was outside the United States

during the summer of 1983. First, the applicant's marriage certificate verifies that on July 16, 1983 the applicant married in Zarka, Jordan. Second, the applicant specified on both the Form I-589 dated October 1, 2004 and the Form I-589 dated January 27, 1993 that he made an August 15, 1983 entry into the United States.

At Part 27 of the Form I-687, the applicant listed December 15, 1980, the date on which his single-entry, nonimmigrant F-1 entry visa expired, as the date that his period of authorized stay as an F-1 nonimmigrant student expired. A nonimmigrant's period of authorized stay is a separate time period that is governed by different parameters than the validity period of a nonimmigrant's entry visa. The applicant's F-1 nonimmigrant period of authorized stay continued for as long as the applicant continued his studies and otherwise maintained his F-1 nonimmigrant student status. *See* 8 C.F.R. § 214.2(f)(7)(i).

In sum, a preponderance of the evidence establishes that the applicant's authorized period of stay as an F-1 nonimmigrant student, which began in December 1979, continued during the statutory period.

The applicant indicated on his Form I-687 that he violated his F-1 nonimmigrant student status when he began working without authorization during August 1980. Yet, the applicant submitted no evidence to verify that he did work in the United States prior to the statutory period and he submitted no evidence that it had become known to the U.S. Government, prior to January 1, 1982, that he had violated his lawful, nonimmigrant status. At no point did he even assert that it became known to the Government, prior to January 1, 1982, that he had violated the terms of his F-1 status. The copy of the applicant's Social Security records, attached to the file, suggest that, prior to 1987, the Government had no record of the applicant working in the United States.

As such, the record fails to demonstrate that the applicant violated his F-1 nonimmigrant student status prior to the statutory period or that it became known to the Government, prior to the statutory period, that the applicant had violated his F-1 nonimmigrant student status.

In conclusion, a preponderance of the evidence fails to establish that the applicant continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. Consequently, the applicant is not eligible to adjust to permanent resident status under section 1104 of the LIFE Act. *See* section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

The applicant worked as a fundraiser for the Holy Land Foundation for Relief and Development (HLF) from the early 1990's until December 2001, when the U.S. Treasury Department's Office of Foreign Asset Control (OFAC) blocked all of HLF's assets in the United States. *See* Decision of the Board of Immigration Appeals, In re: [redacted] April 7, 2006, p. 5 and *Holy Land Foundation for Relief and Development v. Ashcroft*, 333 F.3d 156 (D.C. Cir. 2003). During December 2001, OFAC acting under the authority of the International Emergency Economic Powers Act, 50 U.S.C. § 1701 *et seq.*, designated the HLF a "Specially Designated Global Terrorist" pursuant to Executive Order No. 13,224 and a "Specially Designated Terrorist" pursuant to Executive Order No. 12,947. *See Holy Land Foundation for Relief and Development v. Ashcroft*, 333 F.3d 156 (D.C. Cir. 2003); 66 Fed. Reg. 49,079 (Sept. 23, 2001); and 60 Fed. Reg. 5079

(January 23, 1995). The U.S. Court of Appeals for the District of Columbia affirmed these designations. *Holy Land Foundation for Relief and Development v. Ashcroft*, 333 F.3d at 159-160.

The record indicates that the applicant raised funds on behalf of the HLF at conferences and seminars where HAMAS and violence against non-Muslims were praised. *See* Decision of the Board of Immigration Appeals, *In re: Abdel Jabbar Hamdan*, April 7, 2006, p. 7. Donna Chabot, a Senior Special Agent on the Federal Bureau of Investigation's Joint Terrorism Task Force, while testifying before the Immigration Judge, indicated that the applicant gave an HLF fundraising speech in 1993 in which he promoted efforts aimed at causing the Oslo Peace Accords to fail and in which he praised the terrorist organization known as HAMAS in a veiled manner by referring to the organization as "our sister Samah," which is HAMAS spelled backwards. *See Id.* at 6.

A video submitted into evidence before the Immigration Judge showed the applicant soliciting HLF funds while standing in front of a version of the Islamic Palestinian flag that is used exclusively by HAMAS. *Id.* at 6-7. The April 8, 1996, *Dallas Morning News* article: "Paper Trail Leads to HAMAS, Two Organizations Based in Richardson [Texas] Deny They Promote Agenda of Anti-Israeli Terrorists," states that public records, materials from the HLF and interviews with HLF employees substantiate that financial ties exist between HAMAS and the HLF. *See Id.* at 6. The BIA upon reviewing such evidence concluded that the applicant knew or should have known that the HLF provided funding for HAMAS operations and for other terrorist-related activity. *See Id.* at 5-7. In turn, the BIA determined that the applicant as chief fundraiser for the HLF solicited funds or other things of value for a terrorist organization as defined at section 212(a)(3)(B)(vi)(III) of the Act. *See Id.* at 7.

It is also noted here that the applicant solicited funds for a terrorist organization as defined at section 212(a)(3)(B)(vi)(III) of the Act. *See* 8 C.F.R. § 1003.1(g). As such, the applicant engaged in terrorist activities as defined at sections 212(a)(3)(B)(iv)(IV)(cc) and 212(a)(3)(B)(iv)(VI)(dd) of the Act. Thus, the applicant is inadmissible for having engaged in terrorist activities. Section 212(a)(3)(B)(i)(I) of the Act. This ground of inadmissibility may not be waived. 8 C.F.R. § 245a.18(c)(2)(v).

The applicant has failed to establish that he is admissible to the United States. Consequently, he is not eligible to adjust to permanent resident status under section 1104 of the LIFE Act. *See* section 1104(c)(2)(D) of the LIFE Act.

The applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act for the reasons stated above, with each considered as an independent and alternative basis for denial.

ORDER: The decision of the director is affirmed. This decision constitutes a final notice of ineligibility.