U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: NEW YORK Date: MAR 1 5 2007

MSC 02 068 62578

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, of 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 director denied the application because 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.

On appeal, counsel asserts that the applicant has submitted sufficient evidence of residency in the United States for the qualifying period and has provided reasonable explanations for any inconsistencies in the record.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. 8 C.F.R. § 245a.11(b).

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 exceed 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. 8 C.F.R. § 245a.15(c)(1).

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 petitioner 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 petitioner 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 or petition.

Here, the submitted evidence is not relevant, probative, and credible.

Although Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. See 8 C.F.R. § 245a.2(d)(3)(v).

Nevertheless, an affidavit not meeting all the foregoing requirements may still merit some consideration as "any other relevant document" pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must be on employer letterhead stationery, if the employer has such stationery, and must include the following:

(A) Alien's address at the time of employment;
(B) Exact period of employment;
(C) Periods of layoff;
(D) Duties with the company;
(E) Whether or not the information was taken from official company records; and
(F) Where records are located and whether the Service may have access to the records.

The regulation further allows that if official company records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and explaining why such records are unavailable may be submitted in lieu of meeting the requirements at (E) and (F) above.

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

- An affidavit notarized on November 29, 2001 from [redacted] of East Meadow, New York attesting that he has known the applicant for approximately sixteen years. [redacted] calls the applicant his "best friend" and states that they both used to live in the same area of Elmhurst. [redacted] asserts that he and the applicant attended a lecture together in October 1987 and see

each other weekly at an Islamic Community Center.

- An affidavit notarized on November 28, 2001 from [redacted] of Valley Stream, New York attesting that he has known the applicant "approximately twenty years from Pakistan." [redacted] states that he and the applicant were neighbors and "living together" at [redacted] 2 in Elmhurst, New York for three years. [redacted] states that he and the applicant visited Virginia together in August 1986 and also saw one another on other occasions.

- A copy of a letter dated March 13, 1990 from [redacted], President of the Masjid Alfalah in Corona, New York stating that the applicant has been "visiting the Masjid (Mosque) frequently for the purpose of daily and Friday Congregational Prayers."

- A copy of an undated letter from [redacted], President of RTA Electronics in Jackson Heights, New York stating that the applicant worked for the company as a technician from September 1981 to January 1990.

- A copy of a bank statement dated December 10, 1982 from an American Savings Bank branch in Brooklyn, New York addressed to the applicant at [redacted] in Elmhurst, New York.

On July 9, 2004, the director issued a Notice of Intent to Deny (NOID) stating "there were significant and glaring discrepancies between [the applicant's] oral testimony and the records of the Agency." Citing lengthy portions of testimony apparently from the applicant's interview, the director observed that the applicant testified he was single and did not leave the United States from the time he entered the country in 1981 until June 1987, yet indicated on his Form I-687 that he was married with children born in 1983, 1985, and 1988 and had departed from the United States in 1982, 1983, 1985 and 1987. The director also noted that the applicant listed the period of July 1987 to September 1987 as his last absence from the United States on his Form I-687, but also listed his daughter's birthday as July 1988. The director determined that this birth was not possible if the applicant had had no other contact with his wife other than during his absences from the United States, a fact to which the applicant had testified. Finally, the director indicated that the applicant's testimony concerning his initial entry into the United States lacked detail and the applicant had failed to submit documentary evidence of residency in the United States during the qualifying period.

In response to the NOID, counsel submitted an affidavit from the applicant in which the applicant asserted that he had great difficulty understanding the interviewing officer because of the officer's "thick Spanish accent," which resulted in the applicant's departures from the United States not being "accurately depicted during the questioning." The applicant affirmed that he was absent from the United States for the same periods listed in his Form I-687. Counsel also submitted the copy of the bank statement listed above.

In the decision to deny the application dated December 28, 2004, the director stated that the applicant's "rebuttal does not meet the burden of proof," and denied the application for the reasons set forth in the NOID.

On appeal, counsel asserts that any discrepancies between the applicant's testimony and other information in the record were the result of the interviewing officer's inability to understand the applicant's accent and vice versa. Counsel also contends that the interviewing officer displayed belligerence toward the applicant that further compromised the applicant's ability to communicate during the interview. Finally, counsel asserts that the applicant has provided reasonable explanations for any inconsistencies in the record.

As indicated above, the Notice of Intent to Deny (NOID) contains long passages of testimony that appear to be verbatim transcriptions of the applicant's interview. There are interview notes in the record that contain some of this testimony, but much of this testimony is not found elsewhere in the record. Furthermore, when the transcription of the applicant's testimony found in the interview notes is compared to the transcription of the testimony found in the NOID, certain material discrepancies appear. For example, as a response to the question "Has your wife ever been to the United States, Canada, or Mexico in 1981, 1982, 1983, 1984, 1985, 1986 and 1987 through May 4th, 1988", a question which apparently was asked more than once, the NOID lists the applicant's answer as "No, I am single." This response, which contradicted the evidence that the applicant was married, was one reason given by the director for denying the application. However, this response does not appear in the interview notes, in which the applicant's only response to the aforementioned question was "No, my wife has never been to the United States prior to January 1st, 1982, 1983, 1984, 1985, 1986 and 1987 through May 4, 1988." Furthermore, the order in which certain questions were asked during the interview also differs between the two documents.

Because of the aforementioned discrepancies and omissions, the AAO is unable to determine if the applicant's testimony at his interview was indeed inconsistent with other information in the record. Accordingly, the AAO finds that there is insufficient evidence in the record to support the director's findings that the applicant's oral testimony was inconsistent with other information in the record, and these findings are withdrawn. Likewise, the record contains insufficient evidence to corroborate the accounts of the interview given by the applicant or counsel[1], and the AAO renders no findings concerning these accounts.

The AAO now turns to the other discrepancy noted by the director: the birth of the applicant's daughter more than nine months after the applicant was in contact with his wife in Pakistan. The applicant indicated that he was absent from the United States from July 1987 to September 1987 and his daughter was born in July 1988. In an affidavit dated March 23, 1990, the applicant stated that the date of his departure in 1987 was July 29. The applicant listed only the month of his daughter's birth on his Form I-687. Contrary to the director's findings, the dates listed by the applicant do not indicate a physical impossibility, as it is physically possible for the applicant's daughter to have been conceived in September 1987 and born in July 1988.

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[1] It has not been demonstrated that counsel was present at the interview in question. The record contains a statement apparently signed by the applicant at his interview indicating that the applicant agreed to proceed with his interview without the presence of his attorney.

The AAO now turns to the issue of the applicant's absences from the United States. Although it is possible that one or more of the absences listed by the applicant exceeded 45 days, it is also possible that the applicant was never absent from the United States for a period exceeding 45 days. The applicant listed the date of his departure in 1987 as July 29. Accordingly, the applicant could have returned anytime prior to September 11, 1987 and not have been absent for 45 days or more. The applicant has not provided exact dates for any of his other absences, beyond indicating the month he departed and the month he returned. The record lacks evidence of the exact dates of these absences, or evidence from which the exact dates of these absences may be inferred. The NOID contains testimony by the applicant that he was absent from the United States for two months in 1987. However, as with other relevant portions of the applicant's testimony quoted in the NOID, this testimony is not found in the interview notes. Consequently, barring more conclusive evidence, the AAO cannot affirm the director's finding that the continuity of the applicant's residency was broken by an absence in excess of 45 days.

Nevertheless, upon review of all the evidence in the record, the AAO determines that the evidence submitted by the applicant is not sufficiently relevant, probative, and credible to meet the applicant's burden of proof. Specifically, the documents submitted by the applicant lack necessary detail to demonstrate the applicant's continuous residency throughout the qualifying period:

- [redacted] indicates that he resided with the applicant at [redacted] in Elmhurst, New York for three years, but fails to list the dates of his residence there.

- [redacted] states that he lived in the same area of Elmhurst, New York as the applicant for eight years, but fails to list the dates of his residence there or the applicant's address(es) during the time of their acquaintance. [redacted] states that he moved from Elmhurst to East Meadow in 1999, from which it may be inferred that the [redacted] and the applicant were not neighbors in Elmhurst during the qualifying period. The applicant is currently a resident of Elmhurst.

- President [redacted] of the Masjid Alfalah fails to provide any dates on which the applicant attended services at the mosque or even an approximate date on which the applicant began attending services there.

- The letter from [redacted] President of RTA Electronics, contains scant details concerning the applicant's duties with the company. It fails to list the applicant's address at the time of employment. Also, it does not state whether or not the information in the letter was taken from official company records, where these records are located and whether access to these records is permitted. [redacted] does not state that the alien's employment records are unavailable or explain why such records are unavailable.

- The bank statement is probative of the applicant's presence in the United States on or around a particular date. However, and particularly in light of questions concerning the length of the

applicant's absences from the United States, such a document is not sufficient to establish that the applicant resided at the address listed on the statement for the entire qualifying period.

Given the insufficiency in the evidence of residency submitted by the applicant, the AAO finds that he has not met his burden of proof in showing that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. Accordingly, the applicant has not established eligibility to adjust status to Legal Permanent Resident status under section 1104 of the LIFE Act.

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