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20 Massachusetts Ave. NW, Rm. 3000
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: DEC 15 2008

MSC 01 313 60226

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).

IN 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 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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the 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 can only provide secondary evidence because he had no legal status during the requisite period. Counsel states that all the evidence the applicant has provided contains true and correct information. Counsel submits a copy of the applicant's rebuttal to the Notice of Intent to Deny and an affidavit from an affiant in support of the appeal.

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.]

The regulation at 8 C.F.R. § 245a.16(b) reads as follows:

> For purposes of this section, 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. Also, brief, casual, and innocent absences from the United States are not limited to absences with advance parole. Brief, 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.

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.

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.

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

On his Form I-687 application signed February 19, 1990, the applicant indicated that he departed the United States on June 25, 1987 and returned August 5, 1987. According to the interviewing officer's notes, taken at the time of the applicant's interview on June 10, 2002, the applicant indicated that he departed the United States on June 1, 1987 and returned August 5, 1987.

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

- An affidavit from [redacted], who indicated that he has known the applicant since 1983 and has seen the applicant residing at [redacted] Astoria, Queens and working at Express Construction Co.

- An additional affidavit from [redacted] who indicated that he has known the applicant since 1983 and attested to the applicant's residence in New York, New York since that time. The affiant asserted that he and the applicant see each other regularly.
- A letter from Express Construction Co. in Jackson Heights, New York, which attested to the applicant's employment as a helper from March 1982 to June 1987.
- Two affidavits notarized February 15, 1990 and June 8, 2002, from [redacted] of Bayside, New York, who indicated that he was introduced to the applicant in August 1984 and attested to the applicant's moral character.
- An affidavit from [redacted] of Rochester, New York, who indicated that he stayed with the applicant for two weeks in September 1984 in Jackson Heights, New York.
- An affidavit from [redacted], who indicated that he has personal knowledge that the applicant has been residing in the United States since 1980. The affiant based his knowledge on the applicant's residence at [redacted], Jackson Heights and having seen the applicant at Express Construction Co. It is noted that this affidavit was notarized by [redacted]

The applicant submitted affidavits from [redacted]. and [redacted]; however, the affidavits lack probative value as the affiants did not indicate the exact year they met the applicant. It is noted that these affidavits were notarized by [redacted] **The applicant** submitted an affidavit from [redacted] that cannot be considered as the affiant attested to the applicant's presence in the United States subsequent to the requisite period.

The record reflects that on February 15, 1996, the applicant filed a Form I-131, Application for Travel Document. Accompanying the form was a medical certificate dated February 5, 1996 from [redacted] who claimed to be a medical doctor and who indicated that the applicant's mother had been admitted to the Agha Khan (Provincial) Hospital at [redacted]a on January 30, 1986.

To verify the authenticity of the medical certificate, a request was sent to the American Consulate in Islamabad, Pakistan. In response, it was revealed that Agha Khan (Provincial) Hospital did not exist and it was never located at [redacted] Pakistan; there was only an Aga Khan pick-up-point laboratory in Quetta. It was further revealed that no one by the name of [redacted] worked at this facility, the telephone numbers listed on the medical certificate did not exist and the words and "[redacted]" were misspelled.

It is noted that in a notice dated April 4, 1996, the applicant's request for advance parole was denied and the applicant was informed that the medical certificate was deemed to be fraudulent.

On August 27, 2007, the director issued a Notice of Intent to Deny, which advised the applicant of the adverse information obtained regarding the medical certificate. The director determined that the applicant had willfully submitted a fraudulent medical certificate in order to obtain advance parole. The applicant was also advised that: 1) the affidavits notarized by [redacted] appeared to be fraudulent as [redacted] had been convicted of supplying unwarranted documents; 2) [redacted] provided contradicting statements as in his initial affidavit the affiant attested to the

applicant's residence at [redacted], Astoria, Queens, but in his second affidavit, the affiant indicated the applicant resided in New York City (Manhattan); and 3) the employment letter from Express Construction Company contained an illegible signature.

The director also determined that the applicant's absence from June 1, 1987 through August 5, 1987, exceeded the 45-day limit for a single absence from the United States and was not brief, casual or innocent.

In response to the Notice of Intent to Deny, the applicant asserted that he "had taken one trip outside the United States from June 25, 1987 to August 5, 1987 which falls within the statutory period and adds up to 41 days."

As a signed statement was not executed by the applicant at the time of his interview, the AAO is not able to determine whether the applicant's 1987 absence from the United States was more than 45 days. In addition, there is no evidence that the applicant's trip to his native country, Pakistan, involved any illegal or other objectionable activities contrary to the policies reflected in the United States immigration laws. Accordingly, the director's finding in this matter will be withdrawn.

The applicant, in response to the Notice of Intent to Deny, also asserted that the director should take into account the passage of time when evaluating the sufficiency of the evidence provided. The applicant stated that he had provided numerous affidavits and a job letter which established his continuous residence in the United States since April 1981. The applicant asserted being a lay person he was not aware of [redacted] fraud conviction.

Regarding his absence from the United States, the applicant asserted that he "had taken one trip outside the United States from June 25, 1987 to August 5, 1987 which falls within the statutory period and adds up to 41 days."

Regarding the medical certificate, the applicant asserted, "this letter was submitted on or about 1996 and circumstances have changed in the last 11 years. The above mentioned hospital was a private hospital which has closed."

The applicant submitted affidavits from: 1) [redacted] who indicated he met the applicant at a party in 1981 and has remained good friends with the applicant since that time; 2) [redacted] who indicated that he met the applicant in 1982 and resided with the applicant for 12 years; and 3) [redacted] who indicated he has known the applicant since 1984.

The director concluded that the applicant's response was insufficient to overcome the grounds for denial outlined in the Notice of Intent to Deny, and denied the application on September 28, 2007.

On appeal, counsel submits an affidavit from [redacted], who indicated that he met the applicant in the United States in 1985 and attested to the applicant's moral character.

The U.S. Citizenship and Immigration Services (USCIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--, supra.* In ascertaining the evidentiary weight of such affidavits, USCIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--, supra*, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by counsel and the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988, as he has presented contradictory and inconsistent documents, which undermines his credibility.

The employment letter from Express Construction Co. failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the letter also failed to 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. Furthermore, the signature on the letter was indecipherable, thereby giving rise to questions whether the signature is that of a person who was authorized and affiliated with the company.

As conflicting statements have been provided, it is reasonable to expect an explanation from the affiant in order to resolve the contradictions. However, no statement from [redacted] has been submitted to resolve his contradicting affidavits. As such, his affidavits have little probative value or evidentiary weight.

[redacted] and [redacted] all claimed to have known the applicant during the requisite period, but failed to state the applicant's place of residence during the requisite period, and provide any details regarding the nature of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim.

[redacted] attested to the applicant's residence since 1980 in the United States. The applicant, however, claimed on his application that he *first* entered the United States in 1981. In addition, and [redacted] attested to the applicant's residence in Jackson Heights during the requisite period. As the applicant failed to list any residence during the requisite period on his Form I-687 application, and did not provide any evidence such as a lease agreement, rent receipts, or postmarked envelopes addressed in his name, the affidavits from these affiants have no evidentiary weight and probative value.

The information from the American Consulate in Pakistan was obtained less than a month after the questionable medical certificate was written. As such, the applicant's rebuttal to the medical certificate is not persuasive. Furthermore, the applicant has not provided any evidence to support his assertion that "the above mentioned hospital was a private hospital which has closed." Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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 numerous 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.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the District Office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The applicant asserts that he only departed the United States one time during the requisite period; June 25, 1987 to August 5, 1987. However, the record contains a copy of his Pakistani passport issued in 1990, which contains an entry indicating that the applicant had previously traveled on another passport issued from Quetta, Pakistan on April 4, 1986.

The applicant's failure to disclose this absence from the United States is a strong indication that the applicant was not in the United States during this period or may have been outside the United States beyond the period of time allowed by regulation. This further undermines the credibility of the applicant's claim to have continuously resided in the United States since before January 1, 1982, through May 4, 1988.

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