U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: NEW YORK Date: JUL 18 2008

MSC 02 245 60792

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 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.

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 (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 director did not properly consider the evidence in the record and reiterates the applicant's claim to have resided in the United States continuously in an unlawful status since 1981.

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 June 2, 2002. As evidence of his residence in the United States during the years 1981-1988 the applicant submitted a series of letters and affidavits which had originally been filed in 1990. They included the following:

- An undated letter from the managing of Queens News & Smoke Shop in Forest Hills, New York, stating that the applicant worked at the shop selling different kinds of store items from April 1985 to December 1989, and was paid in cash.

- An undated letter from the owner of Interboro Construction Company in Brooklyn, New York, stating that the applicant was employed by his company as a construction worker doing waterproofing, roofing, and brick painting from July 1981 to April 1984, and as a painter both indoor and outdoor from May 1984 to January 1990, and was paid in cash.

- A letter from a member of Board of Trustees of the Jamaica Muslim Center, Inc. in Queens, New York, dated November 4, 1990, stating that the applicant was a regular prayer attendee since 1982.

  A letter from [redacted], dated September 8, 1990, stating that the applicant lived with him in his home from June 1981 to June 1987, and an affidavit from the same person dated May 28, 2002, stating that he provided room and board to the applicant at his residence at [redacted], Jamaica, New York, from June 1981 through June 1987; that the applicant left for Pakistan in June 1987 for a period of one month to visit his parents who were seriously ill; that the applicant returned from Pakistan in July 1987, and in August 1987, moved to [redacted], Jamaica, New York, which is a few blocks from his house; that the applicant lived at this latter address until January 1990, and visited him frequently.

- Two original envelopes addressed to the applicant in the United States. One envelope was addressed to the applicant at [redacted], Jamaica, New York, from an individual in Bangladesh, with postmark apparently dated October 14, 1986. The other envelope was addressed to the applicant at [redacted], Miami, Florida, from an individual in Jamaica, New York, with postmark apparently dated May 24, 1990.

On July 12, 2006, the director issued a Notice of Intent to Deny (NOID), citing some inconsistencies in the evidence of record which undermined the credibility of the applicant's claim to have resided continuously in the United States during the time period required for LIFE legalization. The applicant was granted 30 days to submit additional evidence.

In response the applicant offered explanations for the evidentiary inconsistencies cited in the NOID and submitted some additional documentation, including:

Another affidavit from [redacted], a resident of Jamaica, New York, dated March 24, 2004, stating that he has known the applicant since 1981 because the applicant came to live with him at his home at [redacted] Jamaica, New York, when the applicant came to the United States; that the applicant lived in his house from June 1981 to June 1987, and that the applicant was working as a construction worker/painter; that the applicant moved to [redacted] in August 1987, and lived there until January 1990; that the applicant visited him frequently during that period; that he was aware the applicant traveled to Pakistan in June 1987 for a period of one month to visit his sick parents; that he knew the applicant went to the New York Legalization Office located at 201 West 24th Street in New York with his application for Temporary Resident Status in August 1987 after he returned from Pakistan, and that the applicant told him that

his application was not accepted by the front-desk officer because of his brief absence from the United States in June 1987.

An undated letter from [redacted], in which he affirms that he is the owner of Interboro Construction Company and addresses the discrepancies noted by the director in his NOID.

On September 18, 2006, the director issued a Notice of Decision denying the application. The director found that the applicant's rebuttal and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial. The director concluded that the evidence of record 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 director failed to articulate the reasons for finding the evidence submitted by the applicant not credible.

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 two envelopes submitted by the applicant with his I-687 application are of little probative value as evidence of the applicant's continuous residence during the requisite period. One envelope is addressed to the applicant at [redacted] Jamaica, New York (where he claims to have lived from June 1981 to June 1987), and the other is addressed to the applicant at [redacted], Miami, Florida (where he claims to have lived from February 1990). The envelopes have postage stamps dated October 17, 1986 and May 24, 1990, respectively. While these envelopes may show that the applicant resided at these addresses during 1986 and 1990, they would not be sufficient in and of themselves to establish the applicant's continuous residence in the United States before 1986, much less before January 1, 1982, as required for legalization under the LIFE Act.

The employment letters from the manager of Queens News & Smoke Shop and Interboro Construction Company, both undated, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they did not provide the applicant's address at the time of

employment, did not declare whether the information was taken from company records, and did not indicate whether such records are available for review. Neither letter was dated, and there is no indication when they were actually written. The director, in the NOID, noted a discrepancy between the date of Interboro Construction Company's registration and the date the applicant claimed to have begun work there. In an attempt to clarify the discrepancy noted above, the applicant submitted an undated letter from [redacted] asserting that Interboro Construction Company is an affiliate of Interboro Construction Inc. and that he is the owner of the affiliate company.

The record from the New York State Department of State, Division of Corporations, indicates that Interboro Construction Company Inc. was registered in Bronx County on July 21, 1983, and Interboro Construction Inc. was registered in Suffolk County on December 20, 1999. The record does not reflect any other registration for "Interboro Construction" other than the records indicated above. Mr. [redacted] did not provide any information as to when his affiliate in Brooklyn was registered, and submitted no evidence in that regard. While the applicant claims to have begun work at Interboro Construction Company in July 1981, the company does not appear to have been registered before July 21, 1983, at the earliest. Mr. [redacted] did not explain how the applicant could have started working for a company two years before it was registered. For the reasons discussed above, the AAO determines that the employment letters have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The inconsistencies noted above, and the applicant's inability to reconcile these inconsistencies, undermine the applicant's credibility. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

As for the letter from the assistant director of the Jamaica Muslim Center, it does 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 letter from [redacted], a member of the Board of Trustees, dated November 4, 2001, does not state where the applicant lived at any point in time between 1982 and 1988. The letter does not indicate how and when [redacted] met the applicant, and whether the information about his attending services since 1982 was based on [redacted]'s personal knowledge, Muslim Center records, or hearsay. Since [redacted]'s letter does not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that it has little probative value. The letter

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 and affidavits by [redacted] dated September 8, 1990, May 28, 2002 and March 24, 2004, provide some basic information about the applicant, such as the addresses he claims in the United States during the 1980s, but few details about the applicant's life in the United States and his interaction with the affiant during the six years they supposedly lived together. The information in the letter/affidavits is not very personal in nature, and could just as easily have been provided by the applicant. Nor are the affidavits accompanied by any documentary evidence from the affiant – such as photographs, letters, and the like – of his personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the letter and 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.