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: JUN 03 2008

MSC 02 019 60385

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. The file has been returned to the National Benefits Center. 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 District Director, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application finding that the applicant did not establish that he actually took up residence in the United States prior to January 1, 1982. The director also found that the applicant was not eligible to adjust status under the LIFE Act.

On appeal, counsel for the applicant asserts that the director's decision was arbitrary and an abuse of discretion.

Section 1104(c)(2)(B) of the LIFE Act states:

> (i) In General – 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. 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.

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 or 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 record reflects than on October 19, 2001, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On February 25, 2003, an adjudications officer interviewed the applicant regarding his application. The officer requested that the applicant submit additional evidence relating to his continuous residence and continuous physical presence in the United States. The applicant did not respond to the director's request.

On July 9, 2007, the director issued a Notice of Intent to Deny (NOID) the application. The district director found that the applicant did not establish that he actually took up residence in the United States prior to January 1, 1982, and therefore, was not eligible to adjust status under the LIFE Act.

On August 8, 2007, the director denied the application, concluding that the applicant failed to overcome the grounds for denial as stated in the NOID. The director noted that the applicant stated that he entered the United States prior to January 1, 1982, but failed to provide information about his subsequent departures from the United States to Pakistan.

On appeal, counsel for the applicant asserts that the director's decision was arbitrary and an abuse of discretion. Counsel asserts that updated affidavits were submitted in response to the interviewing officer's concerns about the lack of evidence establishing the applicant's required physical presence and residence. Counsel asserts that these affidavits were credible and verifiable, but that the interviewing officer made no attempt to contact the affiants.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he was continuously physically present in the United States during the requisite period.

In addition to the documents submitted in response to the NOID, the record of proceeding contains several receipts and affidavits previously submitted with his Form I-687, Application for Status as a Temporary Resident. The record also contains several updated affidavits from

individuals who previously submitted affidavits on the applicant's behalf. The following evidence relates to the requisite period:

Affidavits

- Two affidavits from [redacted] Mr. [redacted] states that the applicant came to his house with a construction crew to repair the roof when [redacted] was living in Cold Spring, New York. Mr. [redacted] states that due to the applicant's hard work and good nature, the two became friends and that they have been in touch ever since then. Mr. [redacted] attests that he has known the applicant since January 1982 and that he has been continuously living in the United States since January 1982;

- Two affidavits from [redacted] Mr. [redacted] states that his first meeting with the applicant was in November 1981 when the applicant went to Mr. [redacted] house to repair the sidewalk with a construction crew. Mr. [redacted] attests that he became familiar with the entire work crew and was specifically impressed with the applicant's work ethic and sincerity. He states that he and the applicant became friends and have kept in contact since that time. Mr. [redacted] attests that he has known the applicant since 1981 and that he has been continuously living in the United States that time;

- Two fill-in-the-blank affidavits from [redacted] Mr. [redacted] states that he has personal knowledge that the applicant has resided in the United States since September 1981. He states that he met the applicant in 1981, that they are friends, and that he knows that the applicant has been residing continuously in the United States since 1981; and,

- An affidavit from [redacted] Mr. [redacted] states that he has known the applicant since 1985.

These affidavits are of little probative value and can be given little evidentiary weight, as they are not sufficiently detailed. The affidavits from [redacted] and [redacted] state approximately when they first met the applicant and that they have stayed in contact ever since, but do not list the dates, frequency, or manner of their contact with one another. Neither of them provides the address where the applicant was residing at that time they met him or any other detail about their personal knowledge of the applicant's required continuous physical presence and residence. The affidavits from [redacted] do not explain how he met the applicant, or how he knows the applicant has been residing continuously the United States since 1981. The affidavit from [redacted] lacks any detail whatsoever about his personal knowledge about the applicant's required continuous physical presence and residence in the United States.

Although the applicant has submitted numerous affidavits in support of his application, he has not provided any contemporaneous evidence of residence in the United States during the

duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period.

The record of proceedings contains various other documents, including two envelopes dated in 1990 addressed to the applicant and a receipt from the California Department of Motor Vehicles dated May 7, 1990. None of this evidence addresses the applicant's qualifying residence or physical presence during the eligibility period in question, namely from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have last entered the United States on July 12, 1987, and to have resided for the duration of the requisite period in New York. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

Given the applicant's reliance upon documents with minimal probative value, the applicant has failed to establish continuous residence in an unlawful status in the United States for the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--, supra.*

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

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