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

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[redacted]

FILE: [redacted] Office: NEW YORK Date: JUN 16 2008

MSC 02 365 60444

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:

SELF-REPRESENTED

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, New York, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, the applicant asserts that he lost all of his documents at JFK Airport on May 18, 2005. He contends that he has nothing except the affidavits attached to the appeal form to prove his continuous presence in the United States during the requisite period. He maintains that his claim is true.

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).

In the Notice of Intent to Deny (NOID), dated July 6, 2006, the director stated that the applicant failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that the applicant submitted one affidavit, which was neither credible nor amenable to verification. The director granted the applicant thirty (30) days to submit additional evidence. The record reflects that no additional evidence was received. In the Notice of Decision, dated September 16, 2006, the director denied the instant applicant based on the reasons stated in the NOID.

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 continuously resided in an unlawful status in the United States during the requisite period. Here, the applicant has failed to meet this burden.

In support of the applicant's claim of entry into the United States prior to January 1, 1982, the record contains a Form I-687, Application for Temporary Resident Status pursuant to Section 245A of the Immigration and Nationality Act, signed by the applicant on May 23, 1990. In his Form I-687, at Question #16, the applicant stated that he last came to the United States on June 2, 1981. In connection with his Form I-687, the applicant provided his own affidavit dated on May 23, 1990. In his affidavit, the applicant stated that he first entered the United States without inspection on June 2, 1981.

It is noted that the record also contains a Record of Sworn Statement signed by the applicant on February 16, 2006. The applicant stated that he first entered the United States from Pakistan in July 1981 with a B-2 visa at JFK airport. This statement is inconsistent with his Form I-687 application and previous affidavit. 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 unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record contains no independent objective evidence to explain the above inconsistency. This discrepancy detracts from the credibility of the applicant's claim.

In support of the applicant's claim of continuous unlawful residence in the United States from before January 1, 1982, through May 4, 1988, the record contains a copy of an undated affidavit from [redacted] Mr. [redacted] stated that he has personally known the applicant for over 12 years. The affiant also stated that the applicant left the United States on August 13, 1987, and returned on or about September 18, 1987. The affiant did not provide any contact information and, therefore, his

affidavit is not verifiable. The affiant failed to provide any details regarding his relationship with the applicant. Although not required, the affidavit failed to include any documentation of the affiant's presence in the United States during the requisite period. Although he claimed to have known the applicant for over 12 years, he did not indicate whether these years include the statutory period from 1982 through 1988. The affiant failed to indicate how he dated his acquaintance with the applicant, how he met the applicant or how frequently he saw the applicant. The affiant also failed to indicate the applicant's place of residence during the requisite period. The lack of details detracts from the credibility of the affiant. The affidavit provides minimal probative value.

The record also contains two identical fill-in-the blank affidavits from [redacted] and [redacted]. Both affiants stated that the applicant is their friend and that the applicant lived in their neighborhood from between January 1982 to 1989. Both affiants provided their places of residence, telephone numbers, and passport numbers. Although not required, the affidavits failed to include any documentation of the affiants' presence in the United States during the requisite period. The affiants failed to indicate how they dated their acquaintance with the applicant, how they met the applicant or how frequently they saw the applicant. The affidavits also failed to include the applicant's place of residence during the requisite period. The lack of details detracts from the credibility of the affiants. The affidavits provide minimal probative value.

Although the applicant has three affidavits in support of his application, the applicant has not provided sufficient probative evidence of entry into the United States before January 1, 1982, or 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. The absence of sufficiently detailed documentation to corroborate the applicant's claims seriously detracts from the credibility of his claim.

Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon his own inconsistent statements and affidavits with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

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.