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

[redacted]

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FILE: [redacted] Office: NEW YORK Date: MAY 23 2008

MSC 02 099 63079

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 application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant failed to establish that he entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988, and that he maintained continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988, as required under section 1104(c)(2)(B) and (C) of the LIFE Act.

On appeal, counsel for the applicant submits a brief.

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 states 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.

The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documents that an applicant may submit. While affidavits "may" be accepted (as "other relevant documentation') [*See* 8 C.F.R. § 245a.2(d)(3)(vi)(L)] in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's unlawful continuous residence during the requisite time period.

The applicant, a native and citizen of Pakistan, claims to have entered the United States in August 1981, and to have departed and returned to the United States in two occasions – from December 1984 to January 1984, and from June 1987 to July 1987.

In an attempt to establish his continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided letters, notarized on August 26, 2001, from two acquaintances - [redacted] and [redacted]. Mr. [redacted] stated that he personally knew the applicant as a good friend since he [the applicant] came to the United States since 1981. Mr. [redacted] stated that he personally knew the applicant since 1982 because the applicant "comes to Daood mosque for his prayer every week and Eid prayer twice a year." The applicant also provided undated letters from [redacted], identified as the applicant's brother, stating that the applicant used to share a house with him and is employed in the Halal Meat market as a butcher.

In a Notice of Intent to Deny (NOID), dated February 6, 2004, the district director advised the applicant that he had failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States from prior to January 1, 1982, through May 4, 1988, and continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988. The district director noted that the applicant had not provided evidence of, or any detail regarding, his initial entry into the United States, as well as his subsequent departures and re-entries. The district director also noted that the applicant had stated at an interview required in connection with his application that [redacted] (mistakenly named as [redacted]) was a friend, not his brother, in contradiction to Mr. [redacted] letter. The applicant was afforded 30 days in which to provide additional evidence in response to the NOID.

In response, applicant's prior counsel submitted a letter stating that there were some miscommunications at the applicant's interview because he was not accompanied by a competent interpreter, but no new evidence in support of the applicant's claim.

In a Notice of Decision (NOD), dated July 12, 1006, the district director denied the application based on the reasons stated in the NOID.

On appeal, applicant's current counsel asserts that it is clear that the applicant took two trips abroad before 1988, each of which was for less than one month. Counsel also asserts that the applicant has

provided affidavits and testimony that is consistent, specific, and detailed. On appeal, counsel has not submitted any new evidence in support of the applicant's claim.

Upon review of all the evidence in the record, the AAO determines that the submitted documentation is not sufficiently relevant, probative, and credible to meet the applicant's burden of proof.

Although the applicant has submitted affidavits in support of his application, he has provided no 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. While not required, the letters provided by the applicant are not accompanied by proof of the identification of the affiants, or that the affiants actually resided in New York during the relevant period. They also lack details regarding the basis of the affiants' direct and personal knowledge of the events and circumstances of the applicant's residence in the United States. The letter from the applicant's brother is undated and lacks details regarding the applicant's dates and places of residence in the United States. As such, the documentation provided can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), 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 documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through December 31, 1987.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the insufficiency in the evidence, the AAO determines 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, resided in this country in an unlawful status continuously since that time through May 4, 1988, and maintained continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, 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.