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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: BALTIMORE Date: OCT 02 2008

MSC 02 033 62320

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.

John D. Vaughan

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 director in Baltimore. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Pakistan who claims to have lived in the United States since 1980, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on November 2, 2001. The director denied the application on June 17, 2003 on the ground that the applicant failed to establish his continuous residence in the United States during the statutory period. The applicant appealed the decision to the AAO. On April 18, 2005, the AAO sustained the appeal because the director failed to address the evidence submitted by the applicant and render a determination on its credibility. The AAO returned the file to the district with the instruction to continue the adjudication of the application.

Following a review of the record and attempts to verify the information on the affidavits submitted by the applicant in support of his claim, the director issued a new decision on November 4, 2005, denying the application.

The director specifically found that the affidavits submitted by the applicant could not be verified because some of them do not have contact information such as the affiant's address and telephone number, that some of the affidavits are inconsistent with other evidence in the record, and that the letters of employment do not conform to the standards set forth at 8 C.F.R. § 245a.2(d). The director concluded that the applicant failed to establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. In addition, the director found that the "Translated Abstract From The Register of Birth" submitted by the applicant to establish his identity was not sufficient because the document was not accompanied by the original extract.

On appeal, the applicant has submitted new affidavits from the same affiants and additional documents to establish their identities. The applicant requests a reconsideration and reversal of the director's decision.

The affidavits dated in 2005 are verbatim restatements of the affidavits submitted by the same affiants in 2003. Other than providing their addresses and telephone numbers, the affidavits do not contain new or additional information.

The other documents submitted on appeal - which consist of a copy of the applicant's national identity card, a copy of a birth certificate issued by the Consulate General of Pakistan in New York City, and a copy of the applicant's secondary school certificate issued by the Board of Intermediate and Secondary Education in Karachi, Pakistan - are sufficient to establish the applicant's identity. That ground for denial has therefore been overcome.

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.

As evidence of his residence in the United States during the years 1980-1988 the applicant submitted a series of letters and affidavits, which included the following:

An undated letter from [redacted] of the Muslim Center of New York in Flushing, New York, stating that the applicant has been visiting the center since 1983.

A letter from vice president of Taco International Inc. Garment Importers & Exporters in Manhattan, New York, dated December 12, 1988, stating that the applicant was employed as a "helper" from December 1982 to November 1988, and was paid in cash.

Affidavits from [redacted], manager of Subash Sandwiches Corporation in Brooklyn, New York, and [redacted], supervisor at STZ Groceries Inc., in Brooklyn, New York, both dated June 23, 2003, stating that the applicant was employed on a temporary basis from November 1981 to December 1981 (at a salary of $3.75 per hour) and from January 1982 to February 1982.

An affidavit from a resident of Brooklyn, New York, dated May 8, 1991, stating that the applicant resided with him at his apartment located at [redacted], Brooklyn, New York, from May 1981 to October 1990.

- Two affidavits from [redacted], a resident of Brooklyn, New York, dated May 8, 1991 and October 14, 2001, stating that he had personal knowledge that the applicant resided in the United States from May 1981 to October 1990, that he first met the applicant at the Islamic Center in May 1981, and that he had not seen the applicant since July 2000.

- An affidavit from a resident of New York City, dated October 18, 2001, stating that he had known the applicant since 1982, that he first met the applicant at the Pakistani Consulate in New York, that they have been in touch since then, and that he had visited the applicant several times.

- Affidavits from [redacted] a resident of New York City, dated October 22, 2001, and November 17, 2005, stating that he had known the applicant since 1987, that he first met the applicant at the Mosque in New York, that they have been in touch since then, and that they have visited each other and are close friends.

- Affidavits from [redacted], a resident of West Palm Beach, Florida, dated February 11, 2003 and November 19, 2005, stating that the applicant worked for her as temporary help to mow her lawn, and clean her yard located at [redacted] West Palm Beach, Florida, from October 25, 1985 to November 10, 1985, that the applicant worked for three hours a day on Wednesdays and Saturdays for a total of six hours per week, and was paid $4.50 per hour.

  Affidavits from [redacted], a resident of Burtonsville, Maryland, dated February 10, 2003 and November 21, 2005, stating that he had personal knowledge that the applicant had resided in the United States since 1982.

- Affidavits from [redacted], a resident of Brigantine, New Jersey, dated February 2, 2003 and November 28, 2005, stating that he had known the applicant resided in New Jersey starting in 1981.

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. Like the director, the AAO determines that he has not.

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period for LIFE legalization. For someone claiming to have lived in the United States since November 1980, it is noteworthy that the applicant is unable to produce a solitary piece of primary or secondary evidence during the following eight years through May 4, 1988.

The undated letter from [redacted] of the Muslim Center of New York, 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] states vaguely that the applicant has been visiting the center "since 1983," but does not specify whether the applicant was a member of the center and the duration of his membership. The letter does not state where the applicant lived at any point in time between 1981 and 1988. The letter does not indicate how and when [redacted] met the applicant, and whether the information about his visiting the center since 1983 was based on [redacted] personal knowledge, center records or hearsay. The AAO notes that [redacted] does not claim to have known the applicant prior to 1983. Since 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 the letter 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 letters of employment from [redacted], vice president of Taco International Inc. Garment Importers & Exporters, dated December 12, 1988, as well as from [redacted], manager of Subhash Sandwiches Corporation, and from [redacted], supervisor at STZ Groceries Inc., dated June 23, 2003, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they do not provide the applicant's address at the time of employment, do not declare whether the information was taken from company records, and do not indicate whether such records are available for review. Nor do the letters describe the applicant's job duties in detail. The letters were not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed as indicated during any of the years claimed. Additionally, the letters were not accompanied by any documentation from Mr. and of their own identities and presence in the United States during the 1980s. For the reasons discussed above, the employment letters have little probative value as evidence of the applicant's continuous residence in the United States during the years 1981 through 1988.

The affidavits from [redacted], and [redacted], all have minimal information about the applicant. While they claim to have known the applicant since the 1980s, the affiants provide almost no information about the applicant's life in the United States, where he worked during the 1980s, and their interactions with him over the years. Nor are the affidavits accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. In addition, [redacted] does not claim to have known the applicant prior to 1985, and [redacted] does not claim to have known the applicant prior to 1987. In view of these substantive shortcomings, the AAO finds that the 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.