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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: MIAMI Date: OCT 03 2008

MSC 02 233 62222

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 F. Vaughan
for

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 Miami, Florida. 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 submits additional documentation and asserts that the evidence of record is sufficient to establish that the applicant has 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 March 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on May 21, 2002. As evidence of his residence in the United States during the years 1981-1988 the applicant submitted a series of affidavits and letters. They included the following:

- An affidavit from [redacted], a resident of Plantation, Florida, dated September 10, 2002, stating that he was the manager of Carvel Ice Cream located at [redacted], Miami, Florida, and that the applicant was employed as a sales associate from May 1981 to April 1985.

- An undated letter from [redacted], a resident of Davie, Florida, stating that the applicant was employed as a vendor in his clothing booth at the flee market in Sunrise, Fort Lauderdale, from May 1985 to January 1990, at a weekly pay of $100.00.

- An affidavit from [redacted], a resident of Hialeah, Florida, dated May 16, 2002, stating that he had known the applicant and his family since 1979, that he

knew the applicant lived at [redacted] from 1981 to 1985, and that he visited the applicant many times.

- An undated letter from [redacted], a resident of Ft. Lauderdale, Florida, stating that the applicant was a tenant at her home located at [redacted] Ft. Lauderdale, from May 1985 to November 1989, and that he paid $550.00 a month including utilities.

In a Notice of Intent to Deny (NOID) dated April 25, 2007, the director indicated that the documentation submitted by the applicant was insufficient to establish that he has resided in the United States continuously in an unlawful status from before January 1, 1982 through May 4, 1988. The applicant was given 30 days to submit additional evidence.

In response to the NOID, the applicant submitted additional documentation, including the following:

- An affidavit from [redacted], a resident of Coconut Creek, Florida, dated May 23, 2007, stating that the applicant is his friend, that the applicant had resided in the United States beginning in March 1981, that he personally picked up the applicant and his family from the airport in March 1981, and that the applicant and his family lived in his home in New York City, until they moved to Miami in May 1981.

  A copy of a statement from Travel-n-Style travel agency located in Lahore, Pakistan, dated October 15, 2005, indicating that the agency issued a ticket in the name of the applicant to travel from Karachi to New York on September 20, 1983, and that the applicant's wife and an infant child, [redacted], were issued a ticket to travel from New York to Karachi on July 5, 1984, and from Karachi to New York on August 6, 1984.

  A copy of a hospital bill from Pembroke Pines Hospital in Miami, Florida, addressed to the applicant's wife, [redacted], at [redacted], Miami, for emergency treatment received by the applicant on June 15, 1983.

- A copy of a retail receipt for the purchase of furniture with handwritten notation of the applicant's name, dated May 21, 1983, which does not identify the applicant's address or the name of the business.

On June 1, 2007, the director denied the application, indicating that the above evidence was insufficient to overcome the grounds of denial as stated in the NOID.

On appeal, counsel submitted additional documentation. The pertinent documentation relating to the applicant's claim of continuous residence in the United States during the years 1981-1988 includes the following:

- A copy of a statement from Travel-n-Style travel agency located in Lahore, Pakistan, dated October 15, 2005, indicating that the agency issued tickets in the name of the applicant, his wife and two children, [redacted] and [redacted] to travel from Karachi to New York on March 20, 1981.

- A copy of a partially legible airline ticket from PIA addressed to [redacted], dated March 3, 1981, indicating travel from Karachi on March 20, 1981, arriving in New York, on March 21, 1981, and from New York to Karachi with no date of travel indicated.

- A letter from [redacted], a resident of Plantation, Florida, on Carvel Ice Cream letterhead, dated September 10, 2002, stating that the applicant was employed as a sales associate from May 1981 to April 1985.

- A copy of a hospital bill from Pembroke Pines Hospital in Miami, Florida, addressed to [redacted] at [redacted], Miami, Florida, indicating that the applicant received emergency treatment at the hospital on June 15, 1983.

- A copy of a doctor's receipt for an office visit of [redacted], dated June 25, 1982.

- A copy of immunization records from the State of Florida Department of Health for [redacted] and [redacted] with handwritten entries for January 22, 1982, April 16, 1982, and December 31, 1982, indicating when the immunizations were administered.

- A copy of The School Board of Broward County, Florida, Conference Form, Grades One-Five, report for [redacted], dated December 6, 1983.

- A Certificate of Achievement issued to [redacted] by Sensei Holland's Karate Academy, dated November 1, 1986.

- A letter from [redacted], a resident of Coral Springs, Florida, dated January 31, 2007, stating that she had assisted [redacted] with her studies from elementary school to middle school from 1981 through 1990, that she assisted her with her studies and homework in elementary school from 1983 through 1986, and that she was a member of the International Club at Nova High School and performed in many cultural events at the school.

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 letters of employment from [redacted] manager of Carvel Ice Cream, dated September 10, 2002, stating that the applicant was employed as a sales associate from May 1981 to April 1985, and from [redacted] (undated), stating that the applicant was employed as a vendor from May 1985 to January 1990, at a weekly salary of $100.00, 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. 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 [redacted] and [redacted] of their own identities and presence in the United States during the 1980s. Finally, [redacted] does not claim that he knew the applicant before 1985. 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], dated May 16, 2002, and [redacted] dated May 23, 2005, and the letter from [redacted] (undated) 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 interaction 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 view of these substantive shortcomings, the AAO finds that the affidavits and the letter 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.

The copy of the hospital bill submitted by the applicant as evidence of his residence in the United States in 1983 appears to be fraudulent. The copy of the hospital bill submitted in response to the director's NOID is different from the copy submitted on appeal. The copy of the hospital bill submitted in response to the NOID was addressed to the applicant's wife at [redacted], Miami, Florida, for treatment received by the applicant from Dr. [redacted] on June 15, 1983. The copy of the hospital bill submitted on appeal was addressed to the applicant's wife at [redacted], Miami, Florida, for treatment received

by the applicant from on June 15, 1983. Thus the bill was addressed to the applicant's wife at two different addresses, the first of which has never been claimed by the applicant. In addition, while the dollar amounts charged are the same on both copies, two of the three specific charges differ on the two copies. The contradictions noted above fatally undermine the credibility of the documents as evidence of the applicant's residence in the United States during the year 1983.

The copies of the statements from Travel-n-Style indicating that the applicant and his family were issued tickets at various times in the 1980s to travel between Karachi and New York have no probative value as evidence that the applicant resided in the United States continuously from before January 1, 1982 through May 4, 1988. The statements are not accompanied by copies of airline tickets, boarding passes or any other official airline documents indicating that the applicant and his family traveled as indicated on the statements. The only copy of an airline ticket submitted by the applicant as evidence of his travel to the United States appears to be fraudulent. The copy is illegible, and the dates of travel appear to have been altered to correspond with those on the statement from Travel-n-Style. The statements do not indicate which airline the applicant and his family were booked on. Furthermore, the statement indicating that the applicant's wife and their infant child, [redacted] were issued a ticket to travel from New York to Karachi on July 5, 1984, and from Karachi to New York on August 6, 1984, is contrary to the information on the applicant's Form I-687, dated March 22, 1990, and Form I-485, dated May 21, 2002, in which the applicant stated that his daughter [redacted] was born on July 24, 1986.

The retail receipt, dated May 21, 1983, also has little probative value since it does not identify the business or any address for the applicant. The Certificate of Achievement issued to the applicant's daughter by the karate academy on November 1, 1986 also has little probative value since it pertains solely to the applicant's daughter and does not even identify the academy as located in the United States. Given these substantive deficiencies, the foregoing documents are not persuasive evidence of the applicant's residence in the United States during 1983.

The remaining documents – consisting of a copy of a doctor's receipt for an office visit of [redacted] dated June 25, 1982, a copy of the immunization record for the applicant's children [redacted] and [redacted] dated in 1982, a copy of [redacted]'s school record dated December 6, 1983, and the letter from dated January 31, 2007, regarding [redacted] school activities – have little probative value as evidence of the applicant's continuous residence in the United States during the years 1981 to 1988. On the immunization record the dates on which the immunizations were administered appear to have been altered, thereby calling into question the authenticity of the record. The same applies to the doctor's receipt, on which the date also appears to have been altered. Ms. [redacted] does not cite any school records as the basis of the information attested and does not specifically indicate that the applicant himself resided in the United States during the periods stated in the letter. Thus, the letter is not persuasive evidence of the applicant's continuous residence in the United States during the 1980s.

Even if the AAO accepted the photocopied school record dated December 6, 1983, which appears to include the applicant's signature, as credible evidence that the applicant and his daughter, [redacted], were residing in the United States at that time, this document in and of itself would not be persuasive evidence that the applicant's continuous residence in the United States began before January 1, 1982, as required for legalization under the LIFE Act.

The record includes an affidavit from the applicant, dated April 6, 2005, stating that he, his wife and two children came to the United Sates in 1981, that in 1983 he traveled to Pakistan to visit his mother, and that in 1984 his wife traveled to Pakistan to deliver their child. This affidavit is inconsistent with information on the applicant's Form I-687, dated March 22, 1990, and Form I-485, dated May 21, 2002, that his daughter [redacted] was born on July 24, 1986.

The inconsistencies noted above, and the applicant's failure to reconcile these inconsistencies, undermine the credibility of his claim that he entered the United States in 1981 and resided continuously in an unlawful status through May 4, 1988. 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.*

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.