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U.S. Citizenship
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Services

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FILE:

MSC 02 019 63598

Office: NEW YORK Date:

OCT 22 2008

IN RE: Applicant:

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:

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal counsel for the applicant asserts that the director did not fully support his decision.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. 8 C.F.R. § 245a.11(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 amenability to verification. 8 C.F.R. § 245a.12(e).

An applicant must establish eligibility by a preponderance of the evidence. 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 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.

Citizenship and Immigration Services (CIS) regulations provide an illustrative list of contemporaneous documents that an applicant may submit to establish presence during the required period. 8 C.F.R. § 245a.15(b)(1); *see also* 8 C.F.R. § 245a.2(d)(3)(vi)(L). Such evidence may include employment records, tax records, utility bills, school records, hospital or medical records, or attestations by churches, unions, or other organizations so long as certain information is included. The regulations also permit the submission of affidavits and any other relevant

document, but applications submitted with unverifiable documentation may be denied. Documentation that does not cover the required period is not relevant to a determination of the alien's presence during the required period and will not be considered or accorded any evidentiary weight in these proceedings.

On April 23, 2007, the director sent the applicant a Notice of Intent to Deny (NOID), which stated that the evidence submitted by the applicant was insufficiently probative of continuous unlawful residence in the U.S. from prior to January 1, 1982 through May 4, 1988, and continuous physical presence in the U.S. from November 6, 1986 through May 4, 1988.

The applicant did not respond.

On June 26, 2007, the director denied the application because the applicant had failed to establish his continuous unlawful presence during the required period.

On appeal counsel for the applicant asserts he has established eligibility.

Documents which cover a period after the required period are not relevant to these proceedings. Relevant to the period in question the record contains the following evidence:

- (1) Two statements by [REDACTED] asserting the applicant worked at his 7-11 from 1986 to 1988.
- (2) Statement of [REDACTED] asserting she met the applicant in 1984 playing Cricket on Long Island.
- (3) Statement of [REDACTED] asserting he came to the United States in 1983, knew the applicant from high school in Pakistan, and that they met in New York in 1987.
- (4) Statement from [REDACTED] asserting he and the applicant lived together in New Jersey from November 1981 to June 1984.
- (5) Unsigned statement, asserting the applicant worked at 7-11 from May 1986 to 1990.
- (6) Statement signed by [REDACTED] asserting he has known the applicant since 1981.
- (7) Statement from [REDACTED] asserting he has known the applicant since 1981.
- (8) Statement from [REDACTED] asserting he has known the applicant since 1984, and that he lived with 'them' in Woodhaven, New York.
- (9) Statement from [REDACTED] asserting that he has known the applicant since 1984.
- (10) Statement from [REDACTED] asserting that he has known the applicant since 1984.
- (11) Statement from [REDACTED] asserting that he has known the applicant since 1984.
- (12) Copy of a page from the applicant's passport indicating that he had a prior passport, No. D905 941, issued in Lahore Pakistan in 1986, which was reported as lost.

As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation. The minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.12(e).

Documents which generically assert an affiant has known an applicant since a particular year are not sufficiently probative to support assertions of eligibility. Statements which assert they saw the applicant at church every week or met the applicant at a party are too general to provide any specific detail indicating that the applicant has actual knowledge of the events to which they are testifying. Such casual knowledge of an applicant lacks the context to be sufficiently probative such that CIS can make an informed determination that the applicant has been residing continuously in an unlawful status for the duration of the required period.

The record contains the applicant's application for asylum, [REDACTED]. It reveals that the applicant entered the United States for the first time on October 10, 1991. The applicant claimed at that time that he was a member of the Pakistan People's Party, and that because of his political activities in Pakistan he was afraid he would be killed. He revealed that he had been living in Lahore, Pakistan, for at least the last five years, specifically listing the address [REDACTED] Lahore, Punjab, from September 1986 to August 1991. **The applicant** has fraudulently misrepresented the facts of his continuous unlawful residence in these proceedings.

Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.*

It is clear the applicant has submitted fraudulent documentation, and has materially misrepresented certain facts in order to receive immigration benefits in these proceedings.

The discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the applicant's eligibility is not credible. Accordingly, the applicant has not established the eligibility and the appeal will be dismissed.

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