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

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[redacted]

FILE: [redacted] Office: CHICAGO Date: SEP 02 2008

MSC 02 246 63386

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.

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 District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel states that the director erred in not considering all of the evidence presented. Counsel supplemented the appeal with additional evidence in support of the applicant's claim.

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 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.

On April 18, 2006, the director issued a notice of intent to deny (NOID) informing the applicant of the Service's intent to deny his LIFE Act application because he had failed to establish the requisite continuous residence. The director noted that the applicant failed to submit sufficient credible evidence to support his application. The director simultaneously requested a sworn statement and final court dispositions for each of the applicant's arrests. The applicant was granted thirty days to respond to the notice. In response to the NOID the applicant submitted a letter from [redacted] and some of the same evidence previously submitted. In response to the request for evidence, the applicant submitted a letter, dated May 9, 2006, stating that he had one arrest, on July 22, 2005, for battery, and the trial date had not been set. The record does not reflect a final court disposition for this arrest.

In the Notice of Decision, dated May 25, 2006, the director denied the instant application based on the reasons stated in the NOID. The director noted, specifically, that the letter from [redacted] states that he has known the applicant since 1981; however, when [redacted] was contacted for verification, on May 25, 2006, he stated that he met the applicant for the first time about eleven (11) or twelve (12) years ago. The director determined that the applicant's response to the NOID failed to overcome the reasons for denial.

On appeal, counsel states that in his letter [redacted] stated that the applicant had volunteered at the Pakistani American Council organization since 1981. However, [redacted] based his information on the Pakistani American Council organization's records, although he personally did not know the applicant until about eleven (11) or twelve (12) years ago. Counsel referenced an affidavit from [redacted] wherein he attempts to clarify the basis of the statement he made in his letter that he had known the applicant since 1981.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. The applicant submitted letters and affidavits as evidence to establish the requisite continuous residence in support of his Form I-485 application. The AAO reviewed the entire record. Here, the submitted evidence is not relevant, probative, and credible.

Affidavits & Letters

The applicant submitted the following:

1) An undated letter from [redacted], President of the Pakistani American Council, stating that he has known the applicant since 1981, and that the applicant has been an active volunteer in the 1980's.

2) An affidavit from [redacted] stating that he had based his statement that he had known the applicant since 1981 on records of the Pakistani American Council. However, he stated that he told the immigration officer who inquired about his letter that he personally did not know the applicant until 11 or 12 years ago.

3) An affidavit from dated July 10, 2006, stating that he has known the applicant since 1981 and that since that time they have been meeting each other at community functions. [redacted], however, does not state where he met the applicant, and whether the applicant has been a continuous resident in the United States since that time.

4) An affidavit from [redacted], dated May 5, 2006, stating that he has known the applicant since 1982 and that since that time they have been meeting each other frequently at various occasions and holidays. [redacted], however, does not state when in 1982 he met the applicant, and there is no basis to determine whether he has known the applicant to reside continuously in the United States since that time.

5) An affidavit from [redacted], dated July 9, 2006, stating that he has known the applicant since 1985. [redacted], however, does not state when in 1985 he met the applicant, and does not indicate whether he has known the applicant to reside in the United States throughout the requisite period.

6) An affidavit from [redacted] dated July 10, 2006, stating that he has known the applicant since 1981. [redacted] stated that the applicant resided with him for three months and that they see each other from time to time. [redacted], however, does not indicate whether he has known the applicant to reside continuously in the United States since that time.

The applicant also submitted a letter, dated June 20, 1987, from President of the [redacted] Movement in Islam, Inc., thanking the applicant for attending a Sunday meeting at the mosque. [redacted] does not state when he became acquainted with the applicant in the United States or whether the applicant has been a continuous resident in the United States during the requisite period. [redacted]'s letter is, therefore, not probative.

Contrary to counsel's assertion, the applicant has failed to submit sufficient credible evidence to establish his continuous residence in the United States during the requisite period. As noted by the director, the applicant submitted affidavits from [redacted] which are questionable. In his first affidavit, [redacted] stated that he has known the applicant in the United States since 1981. However, he subsequently contradicted his own affidavit and stated that he based his original statement on records of the Pakistani American Council, and he told an immigration officer who

inquired about his letter regarding the applicant that he personally did not know the applicant until 11 or 12 years ago.

Counsel asserts that [redacted] clarified these discrepancies. However, in his initial letter, Mr. [redacted] made an affirmative statement that he had known the applicant since 1981. There was no indication whatsoever that he was not referring to his personal knowledge. Only after [redacted] revealed that he had known the applicant for only 11 or 12 years, and only after the director raised the issue in his denial notice, did [redacted] change his statement and indicate that his knowledge of the applicant had been based on the records of the Pakistani American Council, and not from personal knowledge, as inferred in his letter.

The above unresolved discrepancies cast considerable doubt on whether the applicant's claim that he illegally entered the United States before January 1, 1982, and resided continuously in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988, is true. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

Also, stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affiants included any supporting documentation of the affiant's presence in the United States during the requisite period. None of the affiants stated how frequently they met the applicant. 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.

As noted above in response to the request for evidence, the applicant submitted a letter, dated May 9, 2006, stating that he was arrested, on July 22, 2005, for battery, and that the trial date had not been set. The record, however, does not reflect a final court disposition for this arrest. CIS must address this arrest and any conviction in any future proceedings.

The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 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.