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

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[redacted]

FILE: [redacted] Office: NEW YORK Date: SEP 2 2 2008

MSC 01 345 61148

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.

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 New York City. 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 resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the director did not give due weight to the affidavit evidence submitted by the applicant, and contends that it establishes the applicant's continuous residence in the United States during the requisite period for LIFE legalization.

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).

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 applicant, a native of Pakistan who claims to have resided in the United States since October 1980, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on September 10, 2001. At that time the record included the following evidence of the applicant's residence in the United States during the 1980s, which had been submitted to the Legalization Office in Miami, Florida, along with a Form I-687 (application for temporary resident status) on February 4, 1992:

- A sworn statement by [redacted], a resident of Sayville, New York, dated January 31, 1992, stating that he had known the applicant since March 1981 and had driven him to JFK Airport in New York for a flight to Pakistan.

- **An affidavit by** [redacted] a resident of Lake Worth, Florida, dated February 3, 1992, stating that he had known the applicant since his arrival in the United States in 1980, that he traveled with the applicant to Pakistan to visit their respective families from September 2 to 26, 1987, and that they both moved from New York and were currently residing in Lake Worth.

  An undated statement by [redacted] a resident of Jamaica, New York, indicating that he knew the applicant resided at an address in Queens from October 1980 to February 1981, and at an address in Sayville, New York, from March 1981 to November 1983.

On February 3, 2004, the applicant was interviewed for LIFE legalization, at which time he submitted the following additional documentation:

- A sworn statement by [redacted], a resident of Brooklyn, New York, dated January 29, 2004, indicating that the applicant lived with him on Bay Parkway in Brooklyn from November 1983 to January 1992.

- An undated statement by [redacted] resident of Brooklyn, indicating that the applicant stayed with him for a few days when he first arrived in the United States in 1980, then moved to an address in Queens, and has remained a friend up to the present time.

- An undated statement by [redacted] a resident of Monsey, New York, indicating that he met the applicant in 1983 when he lived in Brooklyn.

On April 14, 2007, the director issued a Notice of Intent to Deny (NOID), indicating that the affidavit evidence lacked sufficient credibility to establish the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

In response to the NOID the applicant indicated that the three individuals who submitted affidavits/statements in 1992 are no longer in the United States. The applicant submitted the following additional evidence:

An affidavit by [redacted] a resident of New York City, dated May 4, 2007, stating that he has known the applicant since 1981 and has seen him on a regular basis over the years.

- An affidavit by [redacted] a resident of Brooklyn, dated May 3, 2007, stating that he met the applicant in November 1983 when he moved to an address on Bay Parkway in Brooklyn, and that he has remained friends up to the present time.

On June 4, 2007, the director issued a Notice of Decision denying the application. The additional documentation did not meet the criteria discussed in the NOID, the director declared, and therefore did not overcome the grounds for denial. The director concluded that the applicant had failed to establish his continuous unlawful residence in the United States during the requisite period for legalization under the LIFE Act.

On appeal counsel asserts that the director did not give proper weight to the affidavits submitted by the applicant, which are sufficient in and of themselves to establish the applicant's continuous residence in the United States during the period required for LIFE legalization.

The issue in this proceeding is whether the applicant has furnished sufficient probative evidence to demonstrate that he continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. 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 October 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.

With regard to the various affidavits and statements from individuals who claim to have known the applicant during the 1980s, they all have minimalist formats that provide few details about the applicant's life in the United States and his interaction with the affiants during the years 1981 to 1988. For the amount of time they claim to have known him, the affiants offer remarkably little information about the applicant. None of the affiants provides any information about the

applicant's employment, if any, during the 1980s, and whether he lived with any other family members. Moreover, none of the affiants submitted any supporting documentation of their relationship to the applicant during the 1980s – such as photographs, letters, or other documents. Considering the paucity of information in the affidavits, they do not represent persuasive evidence of the applicant's continuous residence in the United States during the requisite period for LIFE legalization.

Given the lack of probative evidence in the record, the AAO determines that the applicant has failed to establish that he 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.