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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 22 2008
MSC 02 031 60713

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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel for the applicant states that the director erred in denying the application, and that the evidence established the applicant's eligibility under the LIFE Act.

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.

In the Notice of Intent to Deny (NOID), dated March 10, 2006, the director stated that the applicant had failed to submit evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that the applicant stated that he had departed the United States to move to Canada in 1987 to get a job there; the director determined, therefore, that by seeking employment in Canada the applicant did not intend to maintain residence in the United States as the absence could not be considered "brief, casual, or innocent." The director also noted that the applicant submitted questionable affidavits, noting that of the six affidavits submitted by the applicant two were faxes, but the signatures on them were originals; all were notarized by the same notary, [redacted] on April 17, 1990; and, two of the affidavits (from [redacted] and [redacted], whose residences are in New York), were notarized by [redacted], who is a notary located in California. The director also noted that in February 1999, the applicant pled guilty to a violation of 8 U.S. C 1326(a), for having presented fraudulent Form(s) I-512 and I-688A, was found inadmissible under 8 U.S.C 212(a)(6)(C)(i) Fraud/Misrepresentation, was placed in proceedings and was ordered removed, and therefore, was not admissible into the United States. In addition, the director noted that the applicant's passport bears a stamp stating that he had previously traveled under a passport issued in 1986 in Lahore, Pakistan. The director determined that this primary passport evidence, which the applicant had not disclosed during the interview or on the original Form I-687, indicates that the applicant was not present in the United States in 1986 and indicates that the applicant was in Pakistan in 1986. The director concluded that the applicant's testimony was not truthful. The director granted the applicant thirty (30) days to submit additional evidence.

In her denial notice, the director noted that the applicant responded to the NOID and submitted seven affidavits attempting to explain the discrepancies noted in the NOID. The director determined, however, the evidence submitted was insufficient to overcome the reasons for denial. It is noted that in response to the NOID the applicant submitted a letter stating that he never intended to abandon his residence in the United States when he traveled to Canada in 1987; that he was never arrested or deported in 1999; and, regarding the fax affidavits, that two of the affiants "were away and wanted [him] to prepare the affidavit[s] of facts and fax it to them;" that [redacted] was present in California when he filed the first application; and, that his passport which was issued in Lahore, Pakistan, in 1981, expired in 1986, and in 1989 he obtained a new passport from the

Pakistan Consulate General in New York. In the Notice of Decision, dated September 27, 2006, the director denied the application based on the reasons stated in the NOID.

On appeal, counsel states that the director erred in denying the application, and asserts that the evidence demonstrates the applicant's eligibility under the LIFE Act. Counsel also notes that a part of the director's decision pertaining to a prior conviction for the applicant is wrong because the conviction relates to a different person. Counsel submits a copy of an INS Memorandum for File [redacted] dated February 19, 1999, for [redacted] which discusses detention and removal proceedings of [redacted] [who evidently sought entry by use of a passport under the name [redacted] (but this applicant spells his name '[redacted]

In addition, counsel points out that the detention and removal proceedings referenced by the director in the NOID pertains to a different person, [redacted] and not the applicant. [1]

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 record reflects that the applicant submitted letters of employment, affidavits, letters, and copies of his passport as evidence to support his Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is not relevant, probative, and credible.

Employment Letters

The applicant submitted a letter of employment from [redacted] located at [redacted], notarized on April 17, 1990, stating that the applicant had been employed as a helper from November 1981 to November 1985. It is noted that the affidavit is a fax copy with original signatures and is notarized by [redacted] a Notary Public of California.

The applicant also submitted a letter of employment from [redacted], located a[redacted], signed by an individual whose identity is not clear, stating that the applicant had been employed in their warehouse since March 1990. It is noted that the

[1] The AAO notes that while counsel for the applicant has submitted as evidence a copy of an INS [redacted], dated February 19, 1999, for [redacted], which discusses detention and removal proceedings of [redacted]n, neither counsel nor the applicant has provided an explanation as to how specifics of the applicant's information ended up in the hands of [redacted] (and/or [redacted]s associates) in Pakistan. Also there is no indication as to how counsel obtained the INS Memorandum for File [redacted] Evidently, counsel has had access to at least part of the record(s) of [redacted] (who was convicted of immigration fraud/misrepresentation while attempting to use the applicant's information to gain entry into the United States).

affidavit is a fax copy with original signatures and was notarized on April 17, 1990, by a Notary Public of California. It is also noted that this affidavit is not relevant to the requisite period as it relates to the applicant's employment in 1990.

Pursuant to 8 C.F.R. § 245a.2(d)(3)(i), letters from employers should be on employer letterhead stationery. **The letters of employment are not on original company letterhead stationery.** In addition, the affiants failed to provide the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiants also failed to 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.

Affidavits & Letters

The applicant submitted the following affidavits which pertain to the requisite period:

1) A sworn affidavit from [redacted], notarized on April 17, 1990, by [redacted], a Notary Public in California. [redacted] states that he resides in New York, and that the applicant resided at [redacted], from November 1981 until November 1985.

2) A sworn affidavit from [redacted], notarized on April 17, 1990, by [redacted] a Notary Public in California. [redacted] states that he resides at [redacted], and that the applicant resided at [redacted] from December 1985 until January 1990.

3) An affidavit from [redacted], notarized on March 31, 2006, stating that he first met the applicant in December 1981 when the applicant came to his home with one of the affiant's friends to celebrate Christmas. [redacted] also attests that the applicant first came to the United States in November 1981.

4) An affidavit from [redacted] notarized on April 3, 2006, stating that he first met the applicant in the Subway in Queens, New York, in April 1982. [redacted] also attests that the applicant first came to the United States in November 1981.

5) An affidavit from [redacted], notarized on March 31, 2006, stating that he first met the applicant, in New York City, in August 1985. [redacted] also attests that the applicant informed him that he first came to the United States in November 1981.

6) An affidavit from [redacted], notarized on March 29, , stating that he first met the applicant at a [redacted] in New York City in October 1982. [redacted] also attests that the applicant first came to the United States in November 1981.

7) An affidavit from [redacted], notarized on March 28, 2006, stating that he first met the applicant, in Brooklyn, New York, in June 1986. also attests that the applicant informed him that he first came to the United States in November 1981.

8) An affidavit from [redacted], notarized on March 29, 2006, stating that he first met the applicant in December 1981 at a restaurant in Jersey City, New Jersey. also attests that the applicant first came to the United States in November 1981.

9) An affidavit from [redacted], notarized on March 29, 2006, stating that he first met the applicant in July 1984 in Queens, New York. [redacted] also attests that the applicant first came to the United States in November 1981.

In addition, the applicant submitted an undated letter from [redacted], Vice Counsellor, of the Consulate General of New York, stating that the applicant's passport [redacted] which was issued on August 23, 1989 by the Pakistan Consulate of New York, was **"previously issued in 1981 from Lahore, Pakistan." With the letter, the applicant submits a** photocopy of his passport showing that a stamp on the passport indicates that the applicant had previously traveled under Passport No. (NOT KNOWN) dated 1986, "which had been reported lost;" and, showing a change to read that the passport (which had been reported lost) had been issued in 1981 instead of 1986. This letter is not probative as it is undated, and it cannot be determined when the letter was issued.

It is noted that the affiants do not indicate how they dated their acquaintance with the applicant, whether and how frequently they had contact with the applicant. Affiants [redacted] attest that the applicant first came to the United States in November 1981. However, these affiants date their acquaintance with the applicant after November 1981, and they do not indicate the basis for their assertions that the applicant first entered the United States in November 1981. Two affiants, [redacted] state that they first met the applicant in August 1985, and in June 1986, respectively, and also state that the applicant informed them that he first came to the United States in November 1981. These affiants do not indicate personal knowledge of the applicant's entry date, and they do not indicate under what circumstances the applicant informed them of this date.

The applicant's testimony is inconsistent with his supporting documentation. The applicant's claim that he has resided continuously in an unlawful manner prior to January 1, 1982, is not credible. Contrary to the applicant's claim, the record reflects that the applicant submitted a photocopy of his passport, with his Form I-485, which reveals that his passport (with an NOT KNOWN number) was previously issued in Lahore in 1986. However, with his appeal the applicant submits an undated letter from [redacted], Vice Counsellor, of the Consulate General of New York, stating that the applicant's passport which was issued on August 23, 1989, by the Pakistan Consulate of New York, was "previously issued in 1981 from Lahore, Pakistan." It is noted that the passport stamps (on both versions of page 7 of the passport) indicate that the passport number is "NOT KNOWN." However, the undated letter purportedly from the Pakistan Consulate

General of New York identifies the passport as: [redacted] Based on the passport stamp indicating that the applicant's passport was issued in Lahore, Pakistan, in 1986, it is clear that the applicant was in Pakistan during that time. However, the applicant does not reveal on his application that he had departed the United States and traveled to Pakistan in 1986. The applicant has failed to provide an explanation for these discrepancies.

The above discrepancies pointing to the applicant's presence in Pakistan in 1986 adds considerable doubt on whether any of the affidavits he submitted to establish his continuous residence are genuine. This casts doubt on whether the applicant has been in the United States since November 1981 as he claims. 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). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in his testimony and in the record. 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.

As 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 or letter writers included any supporting documentation of the applicant's presence in the United States during the requisite period. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. 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. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence 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.