U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: BALTIMORE Date: JUN 02 2009

MSC 02 038 60323

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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Baltimore, Maryland. 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 had entered the United States before January 1, 1982, and had resided continuously in the United States from then through May 4, 1988.

On appeal, counsel for the applicant submits a brief. Counsel asserts that the director erred in denying the application; failed to consider all the evidence on record; failed to give the evidence proper weight and consideration; abused his discretionary authority and denied the applicant due process by misstating the applicant's evidence and testimony; abused his discretion by selectively analyzing the evidence; erred in failing to find the applicant eligible for the benefit sought; failed to comply with United States Citizenship and Immigration Services (USCIS) policy and guidelines; and, that the denial was arbitrary and capricious and failed to comply with the letter of the law and Congressional intent.

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 resided unlawfully in the United States for the requisite period, 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information. Documentation that does not cover the required period is not relevant to a determination of the alien's presence during that period and will not be considered or accorded any evidentiary weight in these proceedings.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(v), states that attestations from churches, unions, or other organizations should: identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided during the membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

The applicant filed a Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on November 7, 2001. On March 29, 2007, the director denied the application. The applicant, through counsel, filed a timely appeal from that decision on April 11, 2007.

The AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO's *de novo* review authority. *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 established that he continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

The record reflects that the applicant submitted the following documentation in an attempt to establish his continuous unlawful residence in the United States during the requisite time period:

Regarding employment:

1. An affidavit dated October 22, 2001, from [redacted] (who died in 2006), owner of Cotton Candy Fashion Inc. (previously United Import), stating the applicant was employed by him from 1981 to 1986. In an affidavit dated August 29, 2006, [redacted] the spouse of [redacted] states her husband told her the applicant worked for him from 1981 to 1986.

2. A fill-in-the-blank affidavit dated April 30, 1990, and an affidavit dated October 22, 2001, from [redacted] stating he had known the applicant in Pakistan and had hired the applicant to work at a 7-Eleven store (#1[redacted]) in 1986.

3. An affidavit dated October 22, 2001, from [redacted] stating the applicant was a night manager at his 7-Eleven Store (#1[redacted]) from 1986 to 1990. Mr. [redacted] also states that the applicant went with him on a trip to Baltimore in 1985

The employment letters provided do not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that they fail to provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; 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. Furthermore, the applicant has provided no corroborative documentation to support his employment claims, such as pay statements or tax records.

Organization letters:

4. A notarized letter from [redacted] General Secretary of the Muslim Community Center of Brooklyn, New York, stating the applicant had been an active member from 1981 to 1985.

5. A notarized letter from [redacted] Treasurer of the Muslim Center of New York, stating he had personally known the applicant from June 1984 to

1986 when the applicant came to the Center for regular and Friday congregation prayers.

The attestation from [redacted] does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v), in that it does not establish the origin of the information being attested to (i.e., whether the information being attested to is anecdotal or comes from membership records). The director noted in his denial of the application that attempts to contact [redacted] were unsuccessful. [redacted] only attests to his knowledge of the applicant's presence in the United States since 1984; he does not attest to any knowledge of the applicant's entry into the United States prior to January 1, 1982.

Affidavits:

6. An affidavit from [redacted] (the applicant's younger brother) stating that prior to his arrival in the United States in 1991, he resided with his family in Pakistan and distinctly remembers in 1981, when he was 12-years-old, that his brother (the applicant) left Pakistan for the United States and returned to Pakistan in 1987 when their mother was ill. He further states that he remembers his family placing telephone calls to the United States to speak with the applicant during his absence from Pakistan.

7. An affidavit dated September 1, 2006, from [redacted] (see No. 2, above) stating he had been living in the United States since 1985 and knows the applicant departed Pakistan in November 1981 because he drove the applicant to the airport in Lahore. [redacted] further indicates that when the applicant returned from a brief trip to Pakistan, he "went to pick [the applicant] up from Manhattan."

8. An affidavit dated August 29, 2006, from [redacted] stating he knew the applicant in Pakistan and when the applicant arrived in the United States in November 1981, the applicant telephoned him from New York seeking help in finding employment. [redacted] states he referred the applicant to a friend ([redacted]) and later saw the applicant in New York in December 1981 and in Baltimore in 1982.

9. Affidavits dated October 22, 2001, and September 1, 2006, from [redacted] stating he first met the applicant in December 1981 when the applicant assisted him in unlocking his car; he and the applicant had been in touch and got better acquainted in 1986 when the applicant started working for 7-Eleven; and, in 1987 he dropped the applicant off at the airport for a trip to Pakistan to visit his sick mother, and that the applicant returned to the United States in August 1987. In an undated affidavit [redacted] reasserts these claims.

10. An affidavit dated September 1, 2006, from stating he first met the applicant in December 1982.

11. Fill-in-the-blank affidavits dated in 1989 and 1990, from (name illegible and telephone contact number provided) stating the applicant had been living with him since February 1987, and [redacted] (no telephone contact number provided) stating he knew the applicant in Pakistan and the applicant had resided with him in New York since 1987.

12. An undated letter from [redacted] (no telephone contact number provided) stating he first met the applicant in November 1981 and the applicant lived with him in Brooklyn, New York, from November 1981 to July 1984, under a lease in the name of [redacted]

13. A letter dated August 1, 2006, from [redacted], Member of Congress, stating the applicant came to his office "in start of eighties" to ask assistance on becoming a US citizen, and that throughout the eighties, he got to know the applicant quite well seeing him at events in the Pakistani community."

Only the affiants in Nos. 8, 9, and 12 personally attest to the applicant's presence in the United States prior to January 1, 1982. However, the affidavits lack details as to how the affiants first met the applicant, what their relationships with the applicant were, how frequently and under what circumstances they saw the applicant, and provide little basis for concluding that they actually had direct and personal knowledge of the events and circumstances of the applicant residence in the U.S. throughout the requisite period. As such, the statements can only be afforded minimal weight.

Regarding departure/absence:

14. A hand-written airline ticket from Pakistan International Airlines (PIA) showing the applicant was issued a ticket for travel from New York to Islamabad on May 29, 1987, showing travel on July 6, 1987.

15. Documentation indicating that the applicant's mother was admitted to a clinic in Lahore, Pakistan, from June 7, 1987, to October 7, 1987 and that the applicant paid for her surgery by travelers checks on October 7, 1987.

16. An affidavit from the applicant's father stating that the applicant was called back to Pakistan due to his mother's illness (she was being treated in a clinic from June 7, 1987, to October 7, 1987) and that the applicant left Pakistan for the United States on (date is illegible/appears altered). While in Pakistan, the applicant was treated for acute tonsillitis on July 17 and 18, 1987.

17. A letter dated May 27, 1991, from PIA stating that when the applicant traveled from New York to Lahore (via Karachi) on July 6, 1987, he was reimbursed for lost luggage, and a letter from PIA dated September 26, 1993, stating that they are unable to certify the applicant's travel in July 1987 because they maintain travel records for only three years.

18. A fill-in-the-blank affidavit dated April 30, 1990, from [redacted] stating he had known the applicant since 1986 and has personal knowledge of the applicant's absence from the United States because he went to the airport to see the applicant off on July 6, 1987.

There are inconsistencies and deficiencies in the record regarding the applicant's claimed absence from the United States in 1987. In connection with a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), signed by the applicant on November 28, 1989, the applicant indicated he had traveled to Pakistan from the United States on July 6, 1987, and returned to the United States without inspection via Tijuana, Mexico, to California on August 5, 1987. The ticket (No. 14, above) provided by the applicant indicates that he traveled from New York to Islamabad on July 6, 1987, but the letter from Pakistan International Airlines dated May 27, 1991 (No. 17) states that the applicant traveled from New York to Lahore, via Karachi, on that date. The applicant has not provided his passport, which would presumably have been required for his various exits and entries from the United States and Pakistan and into Pakistan and Mexico. Nor has he provided any evidence of his travel from California to New York (In No. 7, [redacted] states that he picked the applicant up in Manhattan on August 5, 1987). Furthermore, documentation submitted indicates that the applicant was present in Pakistan when he paid his mother's medical bills with travelers check on October 7, 1987. In order to pay with travelers checks, the payee must be physically present to sign the checks.

Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any 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. (Comm. 1988).

Other documentation:

19. Undated photographs.

While evident that one of the photographs was taken in Baltimore, the photographs do not identify the date they were taken and offer no evidence that the applicant was in the United States before January 1, 1982.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv), and no attestations from churches, unions, or other organizations that comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, Selective Service card, automobile, contract, and insurance documentation, deeds or mortgage contracts, tax receipts, or insurance policies) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K). The documentation provided by the applicant consists primarily of third-party affidavits ("other relevant documentation"), some of which did not contain telephone contact numbers, some of which attest only to the applicant's presence in the United States after the required entry date, and some of which lack specific details as to how often and under what circumstances the affiants had contact with the applicant throughout the requisite time period.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." **Black's Law Dictionary 1064 (5th ed. 1979).** ***See Matter of Lemhammad***, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

It is concluded that the applicant has failed to establish, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and maintained continuous unlawful residence since such date through May 4, 1988, as required for eligibility for adjustment of status to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

It is noted that, beyond the decision of the director, the applicant has failed to submit evidence of his identity pursuant to 8 C.F.R. §245a.2(d)(1).

As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.

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