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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: GARDEN CITY Date: MAR 06 2009

MSC 02 008 62325

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.

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

The director denied the application on the ground that the applicant failed to establish that he entered the United States before January 1, 1982 and 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 applicant has submitted sufficient credible evidence to establish that he meets the continuous residence requirement for legalization under the LIFE Act.

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).

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1), as follows: "An alien shall be regarded as having resided continuously in the United States if *no single absence* from the United States has *exceeded forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed." (Emphases added.)

"Continuous physical presence" is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: "An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States." (Emphasis added.) The regulation further explains that "[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States." (Emphasis added.) 8 C.F.R. § 245a.16(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 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 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 applicant, a native of Yemen who claims to have lived in the United States since 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on September 4, 2001.

In a Notice of Intent to Deny (NOID), dated January 17, 2008, the director indicated that the applicant had not submitted sufficient credible evidence to establish his entry into the United States before January 1, 1982, and his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The director noted inconsistencies between the applicant's testimony at his LIFE legalization interview on October 11, 1007, and other documentation in the record regarding his initial entry into the United States and his continuous residence in the country, which undermines the overall credibility of his claim. The applicant was granted 30 days to submit additional evidence.

The applicant did not respond and on February 21, 2008, the director issued a Notice of Decision denying the applicant based on the reasons stated in the NOID.

On appeal, counsel asserts that the applicant has submitted sufficient credible evidence to establish that he meets the continuous residence requirement for legalization under the LIFE Act and submits photocopies of affidavits previously in the record.

The AAO maintains plenary power to review each appeal 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 AAO's de novo authority has been long recognized by the federal courts. *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 furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The documentation submitted by the applicant in support of his claim that he was continuously resident in the United States during the requisite period for LIFE legalization consists of the following:

- A letter of employment from [redacted] in Brooklyn New York dated March 27, 1991, stating that the applicant was employed as a messenger from July 1983 to October 1989, and was paid $100.00 per week plus tips.
- A series of affidavits – dated in 2003, and 2007 – from individuals who claim to have known the applicant resided in the United States during the 1980s.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility. Here the submitted evidence is not probative and credible.

The record reflects that although the applicant testified that he entered the United States before January 1, 1982 and resided continuously in an unlawful status through May 4, 1988, documentation in the record shows otherwise. At his LIFE legalization interview on October 11, 2007, the applicant testified that he first entered the United States in 1981, and resided continuously in the country except for two or three brief visits outside the country during the 1980s. On the same date, the applicant completed a Sworn Statement essentially stating that he first entered the United States in 1981 and made two or three brief trips outside the country during the 1980s. On a Form I-687 (application for status as a temporary resident) the applicant filed in April 1991, he indicated in response to question #16, that he last came to the United States on January 24, 1989. In response to question #26, the applicant indicated two absences from the United States – April 25, 1983 to May 10, 1983 – to Yemen to visit his family, and October 3, 1989 to October 24, 1989 – to Yemen to visit his family. A copy of the applicant's passport in the file shows that the applicant was issued a B-1/B-2 visa at the United States Embassy in Sanaa, Yemen, on October 3, 1989, which the applicant used to enter the United States on October 24, 1989. While the applicant's entry into the United States on October 24, 1989, is consistent with his stated return to the United States following his alleged last trip outside the United States on October 3, 1989, it is highly unlikely if not impossible that the applicant would have left the United States on October 3, traveled to Yemen, applied for and was

given a B-1/B-2 visa at the American Embassy in Yemen on the same day. This improbability casts considerable doubt on the applicant's claim that he came to the United States in 1981 and resided continuously in the country through May 4, 1988. The applicant's claim is further undermined by the inconsistent statements on his Form I-687. While the applicant stated in response to question #16 that he last entered the United States on January 24, 1989, he stated in response to question #35, that he left the United States October 3, 1989 and returned to the country on October 24, 1989. Given the evidence of the applicant's entry into the United States on October 24, 1989, with a B-1/B-2 visa, and the absence of any objective evidence from the applicant to establish his entry in 1981, the entry on October 24, 1989, is most likely the applicant's first entry into the United States.

On the November 11, 2007, sworn statement, the applicant stated that he resided at [redacted] in New York, from 1981 to 1990, and that he moved to Florida in 1990. On the Form I-687, however, the applicant listed his residential address during the same period as [redacted] Brooklyn, New York. The director notified the applicant of the inconsistencies in the NOID, and granted the applicant the opportunity to submit evidence to reconcile or rebut the inconsistencies, but he failed to do so. The inconsistencies discussed above and the applicant's inability to reconcile the inconsistencies cast considerable doubt on the applicant's claim that he entered the United States in 1981 and resided continuously in the country through the period required for legalization under the LIFE Act. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

The employment letter from [redacted] in Brooklyn New York, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because the letter did not provide the applicant's address at the time of employment, did not declare whether the information was taken from company records, and did not indicate whether such records are available for review. Nor was the letter supplemented by earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during the years indicated. Additionally, the applicant did not list [redacted] as one of his employers in the United States during the 1980's. For the reasons discussed above, the AAO determines that the employment letter has little probative value. It is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

As for the affidavits in the record from individuals who claim to have known the applicant during the 1980s, they all have minimalist formats with little personal input by the affiants. The affiants provide few details about the applicant's life in the United States and their interaction with him over the years. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationships with the applicant in the United States during the 1980's. Only one of the five affidavits claims to have

known the applicant before January 1, 1982. Additionally, the address of the applicant during the 1980s identified by all of the affiants is inconsistent with the address identified by the applicant on his Form I-687 (application for status as a temporary resident), which he filed in April 1991. In view of these substantive shortcomings, the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Based on the analysis of the evidence in the record, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982, and 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. 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.