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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEW YORK Date: MAY 22 2009
[consolidated herein]
MSC 01 324 60808

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: SELF-REPRESENTED

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

On appeal, the applicant submits letters and an additional document.

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.

"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.)

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 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.

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 filed a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act) on May 4, 1990. The applicant claimed to have initially entered the United States without inspection on March 10, 1981, and to have departed the United States on only one occasion during the period from January 1, 1982, through March 4, 1988 – from July 12, 1987, to August 10, 1987, to visit Pakistan due to a family emergency. He also claimed to have lived in New York from March 1981 through May 1989; and to have been employed at One Hour Framing Shops Inc. from April 1981 to August 1987.

The record also reflects that [redacted] filed a Form I-140, Immigrant Petition for Alien Worker, on the applicant's behalf on February 2, 1997. In support of that application the petitioner submitted a document issued on December 29, 1995, by the University of Agriculture in Faisalabad, Pakistan, in recognition of the applicant's having been the best teacher of Agronomy in the Faculty of Agriculture in 1985, and a certificate attesting to the applicant's professional services as an assistant professor in Agronomy between 1982 and December 1985.

The applicant filed the current Form I-485 under the LIFE Act on August 20, 2001. In a Notice of Intent to Deny (NOID) the application, issued on February 12, 2008, the director noted the above discrepancies in the record regarding the applicant's claims. In response to the NOID, the applicant submitted illegible photocopies of envelopes, receipts, and an employment letter, as well as statements asserting that he had never received the certificates submitted in support of his Form I-140.

The director determined that the applicant's response to the NOID was insufficient to establish he had been in lawful status in the United States throughout the requisite time period and denied the application on March 20, 2008. The applicant filed a timely appeal from that decision on April 17, 2008.

On appeal, the applicant submits a letter beginning "[T]oday, I am going to tell the truth to clear up the inconsistencies in the record..." The applicant goes on to state that he was employed as a teacher at the University of Agriculture in Faislabad from September 1980 to December 1989, and that he was physically present on the job for a period of six months from September 1980 to February 1981, and from October 27, 1985 to December 28, 1985. He also states that he did provide [redacted] with the certificates submitted in connection with the Form I-140, but that the certificates were based on the fact that he had the best academic and instructional record while he was in the Department of Agronomy and were given due to his outstanding professional services. The applicant further states that on December 28, 1985, he entered the United States as a nonimmigrant exchange visitor (J-1) to pursue graduate studies at the University of Minnesota (a course transcript record from the Winter Quarter 1986 to Fall Quarter 1987 was included with the appeal).

Absent objective evidence, the applicant's self-serving explanation on appeal is insufficient to explain the inconsistencies noted in the record. Documentation contained in the record, which the applicant now states he did, in fact, provide to [redacted] clearly indicates that the applicant was employed in Pakistan between 1982 and 1985. Furthermore, if the applicant did, as he now claims, depart the United States for employment in Pakistan for two months in 1985 (an absence of more than 45 days) and subsequently returned in lawful status as a non-immigrant exchange visitor, his alleged continuous unlawful residence throughout the requisite time period was effectively interrupted.

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).

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.

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