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20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: NEW YORK

Date: NOV 28 2008

consolidated herein]
MSC 03 052 61065

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. Grisson, 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 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 the applicant reiterates his claim that the evidence of record establishes his continuous residence in the United States during the requisite period for LIFE legalization, and that one absence from the country of more than 45 days was necessitated by emergent reasons that did not interrupt his continuous residence.

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 Pakistan who claims to have lived in the United States since July 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on November 22, 2002. As evidence of his residence in the United States during the 1980s the applicant submitted the following documentation, some of which had originally been submitted with a Form I-687 (application for temporary resident status) in April 1992:

An affidavit by _____ on the letterhead of “Federal Contracting Co.” in Elmhurst, New York, dated April 10, 1992, stating that the applicant was employed as a “helper” from August 28, 1981 to March 15, 1983, at the pay rate of \$200/week.

- A second affidavit by _____ on the letterhead of “Eagle Construction Company” in Jackson Heights, New York, dated April 10, 1992, stating that the applicant was employed as a “helper” from March 25, 1983 to September 10, 1989.

A third affidavit by [REDACTED] on the letterhead of "M.I. Eagle Construction Company" at [REDACTED] in Jackson Heights, New York, dated April 15, 1992, stating that the applicant was his residential tenant at [REDACTED] in Jackson Heights, New York, from July 1981 to December 1991.

Two identically worded affidavits by [REDACTED] of Rego Park, New York, and [REDACTED] of Elmhurst, New York, both dated April 18, 2002, stating that they had known the applicant since 1981 when he resided on Broadway in Jackson Heights.

On May 21, 2007, the director issued a Notice of Intent to Deny (NOID). The director referred to the evidence submitted by the applicant and the testimony he gave at his interview on May 4, 2004, and indicated that the applicant had not shown that he was eligible for legalization under the LIFE Act. In particular, the director cited the applicant's interview testimony that he left the United States in October 1987 to visit family in Pakistan, and did not return to the United States until January 1988, pointing out that this testimony was consistent with information provided by the applicant on his Form I-687 and his Legalization Questionnaire, filed April 16, 1992. This absence interrupted the applicant's residence in the United States, the director indicated, because it exceeded the 45-day limit prescribed in 8 C.F.R. § 245a.15(c)(1) with no evidence that "emergent reasons" prevented the applicant's earlier return.¹ Nor was the absence "brief, casual, and innocent," in the director's view, within the meaning of 8 C.F.R. § 245a.16(b). According to the director, therefore, the applicant had not established his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988, as required under section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act. The applicant was granted 30 days to submit additional evidence.

The applicant responded with an affidavit explaining that he stayed in Pakistan for three months, from October 1987 to January 1988, because his mother, [REDACTED] a diabetic, had problems with her knee joints and could not walk, which necessitated the applicant's assistance in all aspects of her daily life. The applicant stated that he was not able to return to the United States until after his mother's brother (the applicant's uncle), who lived in Dubai, traveled to Pakistan on January 2, 1988 to take over the care duties. According to the applicant, therefore, an "emergent reason" within the meaning of 8 C.F.R. § 245a.15(c)(1) prevented him from returning to the United States within the 45-day period allowed in the regulations. As evidence thereof the applicant submitted the following documentation:

¹ While the term "emergent reasons" is not defined in the regulations, there is some pertinent case law. In *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), the Board of Immigration Appeals held that *emergent* means "coming unexpectedly into being."

- A “medical certificate” on the letterhead of A.I.M. Hospital in Sialkot, Pakistan, signed by the medical officer of the surgical department, dated June 7, 2007, certifying that he examined [REDACTED] on October 1, 1987, diagnosed her as suffering from “pain in both knee joints,” and advised a treatment of complete bed rest for three months – from October 1 to December 31, 1987.
- A handwritten “medical certificate” on the letterhead of Social Security Hospital in Sialkot, Pakistan, with an illegible signature, dated June 9, 2007, stating that [REDACTED] remained under the signatory’s care in November and December 1987 with sciatica and multiple arthralgia, and was bedridden due to multiple arthropathy.
- A photocopy of the passport of [REDACTED] the applicant’s uncle, with a stamp recording his entry into Pakistan, apparently from Dubai, on January 2, 1988.

On August 11, 2007, the director issued a Notice of Decision denying the application. The director indicated that the documentation submitted by the applicant in response to the NOID was insufficient to establish that his return to the United States from his visit to Pakistan in October 1987 was delayed due to emergent reasons. The director also stated that the evidence of record was insufficient to establish the applicant’s continuous residence in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. Thus, the applicant had failed to establish that he qualifies for adjustment of status under the LIFE Act.

On appeal counsel reiterates the applicant’s contention that the record shows he entered the United States in July 1981 and resided continuously in the country through May 4, 1988, except for his trip to Pakistan from October 1987 to January 1988, and that the applicant’s explanation and documentation of his mother’s illness, her need for his daily assistance, and his brother’s arrival in Pakistan in January 1988, demonstrate that the applicant was unable to return to the United States within 45 days due to emergent reasons, which did not interrupt his continuous residence in the United States. No further evidence is submitted on appeal.

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 AAO is not persuaded by the documentation of record that an emergent reason prevented the applicant’s return to the United States from Pakistan in 1987 within the 45-day period prescribed in 8 C.F.R. § 245a.15(c)(1). The two “medical certificates” submitted in response to the NOID are dated in 2007 – 20 years after the illness of the applicant’s mother. The applicant has not explained why the documents appear on the letterheads of two different hospitals and apparently

were signed by two different individuals. Moreover, no contemporary medical records have been produced from 1987 to confirm the illness of [REDACTED]. In addition, the applicant has not shown that his extended stay in Pakistan was due to an event that came “unexpectedly into being” within the meaning of *Matter of C-*. *Id.* According to the first medical certificate, the applicant’s mother was examined on October 1, 1987, and advised to adopt a treatment of complete bed rest for three months. When the applicant traveled to Pakistan in October 1987, therefore, he presumably already knew that his mother would require daily care through the end of the year. While he may have hoped that his uncle would arrive from Dubai earlier than he did to assume the caretaker role, there is no evidence that the applicant thought that would happen or that his uncle’s arrival on January 2, 1988 represented an unexpected delay. Thus, the applicant has not established that “emergent reasons,” within the meaning of 8 C.F.R. § 245a.15(c)(1), delayed his return to the United States until January 1988. The AAO concludes, therefore, that the applicant’s three-month stay in Pakistan interrupted his continuous residence in the United States.

Even if the AAO accepted the applicant’s claim that emergent reasons delayed his return to the United States until January 1988, the documentation of record does not establish that the applicant resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite time period for LIFE legalization. For someone claiming to have lived and worked in the United States since July 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary or secondary evidence during the following seven years through May 4, 1988.

The only evidence of the applicant’s residence in the United States during the 1980s are the previously enumerated affidavits from 1992 and 2001. The AAO notes several oddities in the affidavits which are unexplained by the applicant. For instance, the three affidavits by [REDACTED] in April 1992 appear on three different business letterheads, and his affidavit dated April 15, 1992 misspells the street name in the letterhead as “Boardway” instead of Broadway. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent 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 the applicant’s remaining evidence. *See id.*

Two of the affidavits by [REDACTED], stating that he employed the applicant as a “helper” from August 1871 to September 1989, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they do not identify the applicant’s address during the periods of employment, do not declare whether the information was taken from company records, and do not indicate whether such records are available for review. In addition, the affidavits describe the applicant’s job vaguely as a “helper,” but do not describe his duties in detail. Furthermore,

the applicant has not submitted any earnings statements, tax records, or other corroborative documentation to demonstrate that he was actually employed during the years in question. For the reasons discussed above, the AAO determines that the employment affidavits have limited probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The other three affidavits – from [REDACTED] (1992), [REDACTED] (2001), and [REDACTED] (2001) – are minimalist documents that provide almost no information about how the affiants met the applicant, the applicant's life in the United States during the 1980s, and his relationship with the affiants over the years. Furthermore, the affidavits are not supplemented by any documentation from the 1980s – such as photographs, letters, or the like – demonstrating that a personal relationship existed at that time between the applicant and the affiants. In view of these substantive shortcomings, the AAO finds that 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 foregoing analysis of the record, the AAO determines 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.