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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]

Office: NEW YORK

Date:

JAN - 5 2009

MSC 02 162 63673

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:

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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 he 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 provides a brief and additional documentation.

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 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 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 March 11, 2002. August 24, 2007, the director denied the application. The applicant, through counsel, filed a timely appeal from that decision on September 25, 2007.

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 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 applicant has submitted the following documentation throughout the application process in an attempt to establish his continuous unlawful residence in the United States during the requisite time period:

Affidavits from Acquaintances:

1. Letters, dated February 27, 2002, and September 19, 2007, from [REDACTED] of New York, stating he had known the applicant since January 1981. [REDACTED] also states that after spending some time in Long Island, New York, the applicant moved to Florida where he worked at a grocery store in Fort Pierce, but had been in touch spending vacations with [REDACTED] family until returning to New York in 1991 and getting a job at a convenience store.
2. A letter, dated June 24, 1990, from [REDACTED] of Long Island City, New York, stating that the applicant "received support since 1981 until December 1985, and that the applicant departed the United States for 41 days, returning in February 1988. [REDACTED] states that he gave the applicant "board, room and protection during those years."
3. A letter, dated July 3, 1990 from [REDACTED] of New Jersey, stating that the applicant had been his tenant at [REDACTED] in Paterson, New Jersey, since December 1985.
4. Fill-in-the-blank affidavits from: [REDACTED] of Paterson, New Jersey, stating that she had known the applicant since 1986; [REDACTED] of Chattanooga, New Jersey, stating that he had known the applicant since 1983; an (illegible) affiant of New York, New York, stating that he/she had known the applicant since 1985; and, an (illegible) affiant of Union City, New Jersey, stating that he/she had known the applicant since 1987.
5. An affidavit, dated June 20, 1991, from [REDACTED] of Ft. Pierce, Florida, stating that the applicant had resided at [REDACTED] Fort Pierce, Florida, from 1981 to 1991.

The affiants in Nos. 1 through 5, above, are generally vague as to how they date their acquaintances with the applicant, how often and under what circumstances they had contact with the applicant during the requisite period, and lack details that would lend credibility to their claimed relationships with the applicant. More importantly, the information provided by the affiants is inconsistent. For example, while [REDACTED] (No. 1) and [REDACTED] (No. 5) indicate that the applicant resided in Florida from in or about 1981 to in or about 1991, [REDACTED] (No. 2) and Mr. [REDACTED] (No. 3) indicate that the applicant resided in the New York/New Jersey area from in or about 1981 through July 1990. Due to these inconsistencies, the statements are not credible.

Employment Letters:

6. A letter, dated June 20, 1991, from [REDACTED] manager of Plaza Grocery in Fort Pierce, Florida, stating that the applicant worked for her from 1981 to 1986.

7. A letter, dated May 31, 1990, from [REDACTED], president of AMO Cleaning Corp. in Elmhurst, New York, stating that the applicant had been employed full-time at a salary of \$5.00 per hour since January 13, 1986.
8. An un-notarized letter, dated October 12, 2001, from [REDACTED] 7-Eleven Store # [REDACTED] in St. James, New York, stating that the applicant was employed for a period of two weeks in November 1986.
9. A letter, dated March 6, 2002, from [REDACTED] Said of 7-Eleven Store # [REDACTED] in St. James, New York, stating that the applicant had been employed for some weeks in November 1986.
10. An undated letter from [REDACTED] of Ft. Pierce, Florida, stating that he employed the applicant at J.D. Express, Inc., (also located in Ft. Pierce, Florida) as an Arabic translator from January 1987 to March 1989.
11. A letter, dated June 20, 1991, from [REDACTED] owner of [REDACTED] Grocery Store in Ft. Pierce (Florida), stating that the applicant had been helping her at the store "since last years[sic]."

None of the employment letters in Nos. 6 through 11, above, 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; identity the exact periods of employment; show periods of layoff (if any); 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. Again, the employment statements provided lack consistency and are not, therefore, credible. For example, while [REDACTED] (No. 7) states that the applicant had been employed full-time in New York from January 1986 to May 1990, Mr. [REDACTED] (No. 10) states that the applicant worked for him in Florida during the same time period – from January 1987 to March 1989.

Organization Letter:

12. An undated, un-notarized letter from [REDACTED] in Jersey City, New Jersey, stating that the applicant had been regularly attending the Masjid since 1985.

The organization letter in No. 12, above, does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v), in that it is not 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. Therefore, the statement provides little evidentiary weight. Furthermore, based on the previously noted inconsistencies in the affidavits and employment letters provided, it is unclear where the applicant may have actually been residing in 1985.

Other Documentation:

13. A letter, dated June 25, 1990, from [REDACTED], of New York, stating that the applicant had been a patient since March 1982 and came to his office frequently for regular check-ups.
14. Generic receipts that are either not identifiable with the applicant, or are handwritten on pre-printed forms that are not verifiable.

As with the letter from the [REDACTED] (No. 12), [REDACTED]'s statement is inconsistent with much of the affidavits and employment documentation provided by the applicant.

In addition to the inconsistencies noted above, there are numerous discrepancies in information provided by the applicant contained in the record.

On 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 June 20, 1991, he indicated that he had lived at [REDACTED] in Fort Pierce, Florida since 1980; had no affiliation with any organizations; had departed the United States on only one occasion – from June to July 1982 to visit Pakistan for “family matters;” and had been employed at Plaza Grocery (No. 6, above) from 1981 to 1986, as a translator (No. 10) from January 1987 to 1989, and at [REDACTED] (No. [REDACTED]) from 1989 to 1991.

On a Form I-687 signed by the applicant on July 12, 1990, the applicant indicated that he had lived in Long Island City, New York from November 1981 to November 1985, and at [REDACTED] in Paterson, New Jersey, since 1985; was affiliated with the Masjid AlSalam since December 1985; had been absent from the United States on only one occasion - from February 20, 1988 to April 2, 1988, in order to visit his family in Pakistan; and had only been employed as a janitor with AMO Corp. (No. 7) since January 1986.

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).

Due to the numerous discrepancies and inconsistencies in the applicant's submissions, it is concluded that the documentation submitted is not credible. 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.

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

It is noted that the record reflects that in November 1987, a Form I-130, Petition for Alien Relative, was filed by [REDACTED] on behalf of the applicant to qualify him as the spouse of a United States Citizen. The applicant simultaneously filed a Form I-485, Application to Register Permanent Residence or Adjust Status, based on his marriage to [REDACTED]. Both the Form I-130 and Form I-485 were denied by the director on December 3, 1999.

The record also reflects that the applicant was convicted of a violation of New York Vehicle and Traffic Law section 1180-a (Speeding) on April 28, 1999.

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