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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: NEW YORK Date: JAN 30 2009

MSC 02 143 63951

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, 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 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 and additional documentation as well as photocopies of documentation previously provided.

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 applicant, a native and citizen of Pakistan, claims to have initially entered the United States without inspection in August 1980 and to have departed the United States on only one occasion – from April 6, 1987, to May 12, 1987, in order to visit Pakistan due to the death of his brother.

The applicant filed a Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on February 20, 2002. On August 23, 2007, the director denied the application. The applicant filed a timely appeal from that decision on September 24, 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 has submitted the following documentation in an attempt to establish his continuous unlawful residence in the United States during the requisite time period:

<u>Affidavits/Letters from Acquaintances:</u>

1. A fill-in-the-blank affidavit, notarized on May 24, 1990, from [redacted] of Chicago, Illinois, stating that he knows the applicant left the United States in April 1987 due to his brother's death. [redacted] states that he knows this because he gave the applicant letters to take to his [redacted]) parents and cousin.

2. A letter, dated June 25, 2004, from of Brooklyn, New York, stating that she had known the applicant since 1980 – that they became friends when

residing in the same neighborhood – and that even when the applicant moved to Chicago, he made yearly trips to New York during the Christmas holidays and spent time with her and her family. She also states that before the applicant returned to New York in 1990, she visited him in Chicago – to her recollection that visit was in 1984. In a letter, notarized on March 17, 2006, also states that she met the applicant in Brooklyn in 1980, and that during the years has kept in contact with him via telephone and whenever he visited New York from Chicago. In this letter, states that she visited the applicant at his home in Chicago many times between 1981 and 1990.

3. Letters, notarized on June 25, 2004, and May 17, 2005, from of Richmond Hill, New York, stating that he had known the applicant since 1985 and that they were roommates in Chicago from May 1985 to May 1988.

4. A letter, notarized on an unspecified date in March 2006, from of East Windsor, New Jersey, stating that the applicant is a relative and that they have kept in constant contact since the applicant's arrival in the United States. states that the applicant moved to Chicago in 1980, came to New Jersey in 1981 to visit him during the holidays, and that he ( ) visited the applicant in Chicago in 1986 after hearing about the death of the applicant's brother and persuaded the applicant to return to Pakistan, loaning him money for the trip.

5. An affidavit, notarized on June 16, 2004, from of Centereach, New York, stating that the applicant lived in Chicago from 1980, that he visited the applicant in Chicago in 1982, 1986, and 1988, and that the applicant moved to New York in 1990. In a letter, notarized on May 16, 2005, states that he visited the applicant in Chicago in 1982 and 1986, and that the applicant worked for in Chicago from 1980 to 1990. In a third affidavit, notarized on an unspecified date in March 2006, states that he and the applicant were life-long best friends in Pakistan and that when the applicant departed Pakistan for New York in 1980, he took him to the airport to see him off. states that he saw the applicant again in the United States in 1982 when he visited the applicant in Chicago. In the years since, states that he visited the applicant often - that he saw the applicant in Chicago in 1985, and again in 1986 when the applicant's brother passed away.

6. An affidavit, notarized on May 16, 2005, from of Rego Park, New York, stating that he first met the applicant at in Chicago, where the applicant was working as an assistant manager, in 1987 – that they became friends and have seen each other very often since.

7. An affidavit, notarized on May 17, 2004, from of Bayonne, New Jersey, stating that he had known the applicant since 1980 when they met in Chicago, and that

the applicant worked for and in Chicago from 1985 to 1990.

The record also contains a death certificate showing that the applicant's brother, died on July 26, 1986. However, the applicant indicated on two Forms I-687, Applications for Status as a Temporary Resident (Under Section 245A of the Act) signed on May 23, 1990, and May 11, 2005, that he departed the United States from April to May 1987 due to his "brother's death;" while the affiants in Nos. 1 and 4, above, indicate that the applicant departed the United States due to his brother's death in 1986.

On appeal, counsel submits additional documentation establishing the identity and residence of the affiants, as well as affidavits from and s, stating that U.S. Citizenship and Immigration Services (USCIS) never contacted them to verify the information contained in their original affidavits. Counsel asserts that the applicant has met his burden of proof in establishing that he entered the United States unlawfully in August 1980, and continuously resided in the United States throughout the statutory period except for a brief period in 1987.

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

In summary, for the duration of the requisite time period, 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 church attestations that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(v)(A) through (G). The applicant also has not provided any documentation (including, for example, money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security or Selective Service card, automobile license receipts, deeds, tax receipts, insurance policies or other similar documentation) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K). The only documentation provided by the applicant consists of third-party affidavits ("other relevant documentation").

The only affiant who resided in the same area (Chicago) as the applicant is (No. 3, above), who stated that he was the applicant's roommate 1985 to 1988. Similarly, (No. 6) states that he had known the applicant only since 1987. All of the affiants, other than resided in New York or New Jersey during the periods of time in which they attest to having sporadically seen the applicant in Chicago and New York or New Jersey. As such, those statements can only be afforded minimal weight as evidence of the applicant's continuous residence and presence in the United States 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.

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